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INVESTIGATION INTO THE 1981 FIRINGS OF AIR TRAFFIC CONTROLLERS AT THE CHICAGO AIR ROUTE TRAFFIC CONTROL CENTER

REPORT

BY THE

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

HOUSE OF REPRESENTATIVES

JULY 1989

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[1] Elected Chairman April 20, 1988 (H. Res. 429) Acting Chairman, March 25, 1988.
[2] Died March 25, 1988.
[3] Not counted against Democrat/Republican ratio.
[4] Resigned as Delegate to Congress September 6, 1988.
[5] Resigned October 3, 1988.
[6] Resigned March 9, 1988.
[7] Elected January 22, 1987 (H. Res. 54).
[8] Elected March 2, 1988 (H. Res. 893).
[9] Elected July 13, 1988 (H. Res. 496).
[10] Elected October 6, 1988 (H. Res. 575).
[11] Resigned July 7, 1988.
[12] Resigned January 21, 1987.
[13] Elected January 21, 1987 (H. Res. 45).
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[1] Resigned September 27, 1988.
[2] Resigned October 3, 1988.
[3] Resigned March 9, 1988.
[4] Elected March 9, 1988.
[5] Elected September 27, 1988.
[6] Elected October 13, 1988.

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FOREWORD

The Subcommittee on Investigations and Oversight has spent almost three years investigating the events at the Chicago Air Route Traffic Control Center during the Professional Air Traffic Controllers Organization strike started in August 1981.

Under Subcommittee Chairman James L. Oberstar during the 99th and 100th Congresses, the Subcommittee pursued the very difficult process of attempting to reconstruct the events which occured at the Chicago Center during a period of great turmoil seven years ago.

Based on the information it was able to obtain, the Subcommittee has reached conclusions about those and subsequent events. Those conclusions are contained in this detailed report.

It is hoped that other agencies will use the Subcommittee's findings, conclusions and recommendations as a means of continuing the investigation of the Chicago events and the aftermath. The Subcommittee has made recommendations to the Department of Justice, the Federal Aviation Administration, the Inspector General of the Department of Transportation, the House Committee on Post Office and Civil Service and the Senate Committee on Government Affairs for further action.

Chairman Oberstar, Congressman William F. Clinger, Jr., Congressman Guy V. Molinari, who first received allegations of improprieties at the Chicago Center, and the other Subcommittee members deserve great praise for pursuing this complicated and lengthy investigation and helping to uncover the possibility of serious misconduct.

Glenn M. Anderson
Chairman
Committee on Public Works
and Transportation

LETTER OF TRANSMITTAL

May 26, 1989

Hon. Glenn M. Anderson
Chairman
Committee on Public Works and Transportation
House of Representatives
Washington, DC

Dear Mr. Chairman:

During the 100th Congress, the Subcommittee on Investigations and Oversight conducted an extensive and in-depth examination into the circumstances surrounding the 1981 firing of air traffic controllers at the Chicago Air Route Traffic Control Center in Aurora, Illinois.

As I stated at the beginning of this investigation, it was not our intent to question the policy behind the nationwide firing of controllers, nor were we interested in determining the guilt or innocence of individual controllers. Rather, we were interested in the process and whether or not a federal agency trampled on the rights of individuals.

The investigation was long, and at times, frustrating. There were thousands of documents to analyze and hundreds of pages of previously-sworn testimony to review. But the Subcommittee's greatest obstacle was the unwillingness of certain FAA officials to be completely candid.

I am pleased to forward the attached report which summarizes the results of our inquiry and contains the Subcommittee's conclusions and recommendations.

In closing, the Subcommittee is indebted to the contributions of the General Accounting Office, in particular, Dr. James Hedrick, who assisted the Subcommittee with this project.

Sincerely,

JAMES L. OBERSTAR
Chairman, Subcommittee on
Investigations and Oversight
100th Congress

Would that I could discover truth
as easily as I can uncover falsehood
– Cicero, 44 B.C.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Subcommittee on Investigations and Oversight has spent considerable time and effort investigating the circumstances surrounding the firing of air traffic controllers at the Chicago Air Route Traffic Control Center in August 1981.

The Subcommittee has developed additional information regarding the extent of FAA's manipulation of evidence used to support the firing of Chicago Center controllers. However, there are still questions left unanswered. Because sworn testimony and assertions by FAA personnel remain at odds with both empirical evidence and the reason of logic, the Subcommittee must share the frustrations felt by Cicero over 2,000 years ago.

Throughout the Subcommittee's investigation into the Chicago Center firings, the FAA has consistently maintained that Merit Systems Protection Board (MSPB) decisions have completely vindicated the conduct of FAA officials and upheld the legal sufficiency of the Agency's case against the striking controllers.

While the Subcommittee has not challenged the judgments of the MSPB regarding the legal nuances, it in no way subscribes to the FAA's position that previous adjudication of most of the matters reviewed in this report renders the Subcommittee's inquiry moot.

Misconduct of Agency officials, no matter when discovered, is of concern to the Congress, and should be to the Agency as well. It is hoped that the Subcommittee's efforts will have contributed to an Agency recognition that all was not as it should have been with regard to the Chicago Center firings, and a resolve that those circumstances will never again be repeated.

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On August 3, 1981, the Chicago Air Route Traffic Control Center was hard hit by the national air traffic controller strike. Approximately 80 percent of the Center's work force was eventually dismissed for participating in an illegal strike.

It was reported that the relationship between union and management at the Chicago Center was one of the most hostile in the nation. Those few controllers and supervisors who reported to work did a miraculous job of keeping the country's air traffic control system in operation.

The first two months of the strike were traumatic and confusing times at the Chicago Center, and this situation severely affected the condition of the Center's attendance records. Supervisors who ordinarily would have closely tended to record-keeping requirements were working radar positions for extended hours; normal procedures of shift assignment and scheduling were not followed. After the first few days of the strike, the paperwork was of less importance; supervisors and other Center officials knew who was reporting for work and who was not.

The first step in firing the absent controllers was the issuance of a letter of proposed removal signed by the facility manager, George Gunter. Each controller was notified of his right to an oral reply hearing on the charges. Following the oral reply, a final decision was rendered.

The oral reply hearing process for about 450 controllers was so massive that much of the Center's clerical effort went into copying records for hearings rather than reviewing and correcting mistakes. Additionally, as facility management continued to be deeply engrossed in operational matters, maintenance of accurate records suffered accordingly.

As with most government employees who have been fired, the terminated controllers had the right of appeal to the Merit Systems Protection Board (MSPB). In those instances where fired controllers exercised this right, the FAA had to demonstrate in hearings before the MSPB that the fired controllers withheld their services as part of a national strike.

The FAA's Great Lakes Region chose to base its prima facie case against the fired Chicago Center controllers solely on attendance records -- watch schedules, sign-in logs and time and attendance sheets (T&As).

However, at the Chicago Center, these documents, in many cases, either did not exist at the time of controller dismissals or were riddled with errors. The fact that the records at the Chicago Center were seriously flawed was known by both Center management and key FAA officials in the Regional office.

A plan was instituted whereby records were created where none existed and amended where there were errors. This task was secretly carried out by Center employees, the majority of whom were employed solely for this task, in an area at the Chicago Center designated the "war room."

Three points are central to an understanding of why the Chicago Center conducted these intensive document amendment activities.

First, in anticipation of trial-like proceedings arising out of fired controllers' appeals to the MSPB, the FAA recognized that there was a need for thorough documentation of the unauthorized absences of controllers.

Second, since that documentation largely did not exist at the time of controller firings, records for the Chicago Center that would normally portray each controller's shift assignment and attendance for a given work day had to be created after the fact to depict the actual events that occurred during the strike period.

And, third, of the limited number of records that were in existence at the time of controller dismissals, many contained errors and needed correction or amendment.

From September to mid-November, employees worked in the war room compiling an adverse action file for every fired controller. These files, of particular relevance to anticipated MSPB hearings, would contain documents purporting to be the "evidence relied upon" (i.e., attendance records) by the deciding official, George Gunter, Chief of the Center, in reaching his decision to remove controllers. The director of the war room was Robert L. Miller, who, at the time, was Evaluations Officer at the Center.

Between September 14 and October 1, the adverse action files were sent to the FAA's Great Lakes Regional Labor Relations office, where the files were to be reviewed prior to collating, reproduction and delivery to the MSPB. Because Regional personnel found so many errors in the attendance records, war room employees were required to execute a complete and thorough review of attendance records and make corrections where necessary.

This resulted in a second set of attendance records which were shipped to the Region from October 16 to November 6 to replace, for each controller, the records previously submitted. FAA has never fully acknowledged this second shipment and the substitution of records, and with good reason, since this amendment process took place weeks after George Gunter had issued the final removal letters to controllers. These amended records were sent to the MSPB with certification that these documents were the "evidence relied upon" by Gunter to dismiss controllers -- a certification that we now know to be false.

At the MSPB hearing, FAA's chief witness, George Gunter, testified that he terminated controllers based upon the information included in every controllers' adverse action file. Gunter testified that the attendance records were "contemporaneous" and "kept in the ordinary course of business."

Seemingly, the FAA's case before the MSPB was fully documented. After all, war room personnel spent three months ensuring the records were flawless and consistent -- the type of documentary evidence upon which strong cases rest. The records reflected the strike-related work conditions that the FAA wanted to demonstrate to the MSPB. Although every prosecutor has the opportunity to assemble evidence which makes his case as irrefutable as possible, few have the opportunity, as did the FAA, to oversee its creation and content and to be solely responsible for the characterization of its authenticity.

There is no question that FAA's strategy to produce flawless and consistent records, represented as having been prepared in the normal course of business and relied upon in decisions to fire the absent controllers, would have worked, except for one factor. Unbeknownst to the FAA, an attorney representing some fired controllers obtained copies of sign-in logs as they appeared before they had undergone the alteration process.

When those copies were compared with the versions that appeared in the adverse action files, it became obvious that records submitted to the MSPB as the "evidence relied upon" had been substantially changed from their earliest, original form.

It also became clear that despite Gunter's sworn testimony, these records were not "contemporaneous" and were not kept in the "ordinary course of business." In attacking the authenticity of the attendance records, controllers' attorneys hoped to discredit the FAA's prima facie case and, absent additional justification from the FAA, win reinstatement for their clients.

From this point forward, the FAA attempted to minimize the magnitude of the record alteration process as well as its significance.

In conceding that a limited amount of record alteration took place, the FAA has maintained the Chicago Center's records were amended solely to make them accurate. Completeness and accuracy of the documentary evidence to be introduced is an essential ingredient to any judicial or administrative proceeding. That explains, in part, why greater probity is attributed by the law to records that are prepared and maintained in the ordinary course of business, contemporaneous with the events they portray. In legal theory, records prepared after the fact are more susceptible to the uncertainties and limitations of human memory and, therefore, are inherently less reliable.

The Subcommittee does not question the FAA's correction of the fired controllers' attendance records; however, the timing of this activity (after oral reply hearings and after the issuance of final removal letters) and the extent to which the Agency attempted to conceal those activities in testimony before the MSPB and the Subcommittee, raises serious questions about the Agency's commitment to justice. At the very least, the FAA should have disclosed both the existence and extent of the record alterations.

However, that was not the case. Even though records were significantly altered weeks after the fact, they were presented to MSPB as evidence relied upon by the deciding official. It is clear that the records were changed solely for the purpose of MSPB hearings and that with certain exceptions, the accuracy of those changes were never at issue. It is equally clear, however, that the FAA made every attempt to conceal the extent and timing of those changes, for fear of lessening their evidentiary value.

FAA officials at the Chicago Center and Great Lakes Region were determined to keep those who did not show up for work on August 3, 1981, from being reinstated -- even if it meant certifying, and testifying to, the authenticity of altered and created evidence.

The Subcommittee finds the FAA's conduct in this matter contrary to what the public has the right to expect from its officials and at odds with the protections of due process found in the Constitution. When a federal agency condones, if not encourages, this type of conduct, it is imperative that corrective measures be taken.

Based upon the findings contained in this report, the Subcommittee recommends that:

1. The Department of Justice review sworn testimony presented by FAA officials during hearings before the MSPB and Subcommittee to determine if any prosecutable offense has been committed.

2. The FAA conduct its own review of the Subcommittee's report to 1) take appropriate disciplinary action against any current FAA employee who the agency believes acted improperly and 2) determine whether changes are warranted in procedures for removing personnel and related record-keeping requirements to preclude this from happening in the future.

3. The Inspector General of the Department of Transportation review circumstances in which Center employees were able to amend time and attendance sheets some 18 months after the fact to receive substantial amounts of compensatory time.

4. The House Post Office and Civil Service Committee and the Senate Committee on Government Affairs review this report as to its implications regarding the effectiveness of the Merit Systems Protection Board.

CHRONOLOGY OF EVENTS

8/3/81 - Air traffic controllers begin a national strike.

8/5/81 - Under President Reagan's order, any controller not showing up for his first regular scheduled shift after 11 a.m. will be fired.

George Gunter, Chief of the Chicago Air Route Traffic Control Center, mails proposed removal letters. Some of those letters charge controllers with missing shifts on August 3.

8/13/81 - Oral hearings for the fired Chicago Center controllers begin. Contrary to federal regulations, oral hearing officials are not given authority to recommend what the final decision should be. After reviewing attendance records, many controllers point out inconsistencies to the oral hearing official.

Under the direction of Robert L. Miller, Evaluations Officer at the Chicago Center, a special area designated the "war room" is created to begin processing adverse action files in anticipation of controller appeals to the Merit Systems Protection Board (MSPB). These files are to contain the "evidence relied upon" by Gunter to dismiss the controllers.

Mid-September - Oral hearing process ends. Gunter issues final termination letters.

9/14/81 - Chicago Center begins to send adverse action files to the FAA's Great Lakes Regional Office. Files are under the care and custody of Richard Shewfelt, manager of the Labor Relations office.

10/1/81 - Last of adverse action files for fired Chicago controllers sent to Regional office.

Early October - Activity in the war room increases after a decision is made to check and amend attendance records contained in adverse action files of fired Chicago Center controllers. Two oral hearing officials have their temporary employment extended and another temporary employee is hired to work in the war room.

10/16/81 - Chicago Center begins to send a second set of attendance records to the Region. The records that were originally sent are put in a holding room and are eventually destroyed.

10/23/81 - Richard Shewfelt, on behalf of the FAA, writes the MSPB asking for an extension of 30 additional days to comply with an order requiring the Agency to furnish case files for fired controllers.

11/6/81 - Last of the second shipments of attendance records are sent from the Chicago Center to the Region.

11/16/81 - Great Lakes Regional Office sends adverse action files to the MSPB.

Mid November - War room dismantled at Chicago Center.

12/7/81 - Chicago Center and Great Lakes Region officials meet in Regional office to discuss Chicago Center personnel who were on annual leave during the first week of the strike. Of the 44 cases discussed, it was noted that 31 of the cases were adequate; three were marginal and 10 needed additional data to be "relatively strong cases to the MSPB."

11/2/82 - MSPB hearings begin with Stephen Manrose as presiding official. At these hearings, Gunter testifies he relied upon the attendance records to dismiss controllers. Gunter further states these records were "contemporaneous...kept in the ordinary course of business." Robert Miller serves as FAA's technical advisor during the hearing.

Appellants discover during the course of the hearing numerous alterations and inconsistencies in the agency's documentation. Gunter testified that personnel clerks, after the fact, filled in names on sign-in logs to reflect the status of absent controllers during the strike period. Gunter further testifies that he had no direct knowledge of how the alterations were accomplished.

2/15/83 - Manrose issues decision sustaining removal of the Chicago Center controllers.

2/8/84 - The full board of the MSPB grants petition for review. The initial decision is vacated and the case remanded to the MSPB's Chicago Regional Office. The Board writes: "On remand, the presiding official may wish to consider the need for eyewitness testimony explaining the process by which the records were created. If the written record is to speak for itself we must be sure that it is accurate."

4/17/84 - Phillip Wood, an attorney for the fired controllers, sends letter to Linda Wawzenski, Assistant U.S. Attorney, containing allegations of perjured testimony by FAA officials during MSPB hearings. Wood's lengthy complaint includes FAA documents. In reference to a document, he writes: "The FAA is not aware that we are in possession of this document, and I do not want them aware of it at this time."

6/4/84 - Wawzenski sends Wood's perjury complaint and accompanying documents to Carl Schellenburg, Regional Counsel, FAA Great Lakes Regional Office. Also included is a copy of a letter from Dan Webb, U.S. Attorney, to John Murdock, FAA's Chief Counsel.

In that letter, Webb writes: "It is our conclusion that there is no action to be taken in this matter by the U.S. Attorney's office...We also understand that the 70 cases remanded for new hearing by the MSPB because of document discrepancies are scheduled to be heard on July 9, 1984. We believe that Mr. Wood represents several former controllers in the remand batch."

8/20/84 - MSPB remand hearing begins with Stephen Manrose presiding.

During hearing, attorneys for fired controllers question Miller regarding his signature stamp which now shows up on some documents, but did not during original hearing. Lawyers contend FAA tampered with documents prior to hearing.

8/23/84 - Presiding Official Manrose suggests to FAA attorneys, off the record, that they consider settling the case.

8/28/84 - Hearing resumes with no settlement.

12/17/84 - Manrose issues decision against sustaining removal of controllers.

7/5/85 - MSPB sustains Manrose's decision.

6/3/86 - Oral arguments before the Court of Appeals for the Federal Circuit are heard.

7/16/86 - Acting on information received through Representative Guy V. Molinari concerning discrepancies in Chicago Center records and allegations that evidence might be in danger of destruction, Subcommittee initiates its inquiry into Chicago Center controller firings.

7/23/86 - Subcommittee staff serves subpoena to Chicago Center official requesting production of "certain records, papers and documents..."

7/24/86 - Subcommittee holds executive session hearing in the Chicago Center to receive subpoenaed materials.

3/10 and 3/11/87 - Subcommittee holds two days of public hearings in Washington.

9/3/87 - In a 2-1 decision, United States Court of Appeals for the Federal Circuit affirms decision to remove air traffic controllers.

9/14/87 - Subcommittee holds executive session hearing in Chicago.

THE CREATION OF EVIDENCE AND SUBSTITUTION OF RECORDS

Perhaps the most important discovery of the Subcommittee's investigation was the extent of the record alteration activities undertaken in the Chicago Center's war room in October 1981, and the organized delivery to, and receipt of, those altered documents by FAA personnel in the Great Lakes Regional Office.

A description of the nature and extent of the records alteration process is necessary in order to grasp why the FAA went to such great lengths to conceal it during controller appeals to the MSPB and in testimony before the Subcommittee.

Although the alteration of attendance records* was addressed at great length in the MSPB hearings and is analyzed in Section VI of this report, details of the magnitude, method and timing of the process were never clearly disclosed either before the MSPB or the Subcommittee by testifying FAA officials.

Attendance records were presented to MSPB as "evidence relied upon" in dismissing the approximately 450 striking air traffic controllers at the Chicago Center. The FAA testified in MSPB proceedings that these were contemporaneous business records which were simply compiled, copied and shipped to MSPB; FAA initially denied all allegations to the contrary.

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*At the time of the 1981 strike, the Chicago Center used the watch schedule for advanced scheduling of controller work shifts, the sign-in log to record the actual time and shift worked, and the time and attendance report as the basis for paying the controller. The term "attendance records" is used as an abbreviated title for these three basic records.

For example, while it was suspected that major record alterations had been accomplished, FAA officials grudgingly conceded only the barest of facts surrounding the process. When it became obvious that a second set of attendance records must have been placed in controller files at the Great Lakes Region, FAA officials could not explain how that might have occurred.

In addition, there was never any indication of who in the Regional office received those documents and who was responsible for their review, reproduction and collation. Throughout the MSPB proceedings every attempt was seemingly made to confine knowledge or participation in the records alteration and substitution process to FAA officials at the Chicago Center.

However, it is now known that FAA's assertions were inaccurate and that records had been selectively amended at various times; the most extensive and systematic amendments took place after the original shipment of records to the Region. Further, the evidence strongly suggests that Regional officials were aware of, if not actively involved in, decisions to change the records and substitute corrected copies for those originally sent from the Chicago Center.

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During the second MSPB hearing, the FAA introduced a document (Exhibit 11) which stated that the adverse action files for the Chicago Center controllers, including the attendance records, were sent from the Center to the Region between September 14 and October 1, 1981. It would be logical to assume that after the last of the files were sent to the Region (October 1), the war room at the Center would close down, or at least scale down, since it was in this room that the adverse action files were prepared.

However, activity in the war room dramatically increased. Robert Miller took over direct management from George Gunter, and two persons originally retained as oral hearing officials, Ray Cullerton and Peter Peterson, had their temporary employment extended so they could work in the war room through November. In addition, a family friend of Robert Miller's (and wife of a non-striking controller), was hired by the FAA to work in the war room from October 15 to November 16, 1981.

In pre-hearing depositions and during the MSPB hearings, lawyers for the fired controllers were able to question those who worked in the war room regarding their activities. It was clear from that testimony that a considerable effort was undertaken to review and change the core documents contained in the adverse action files of the fired controllers.

Cullerton and Peterson conducted a thorough review of all records to make sure that the logs and T&As were consistent with the watch schedule for each controller -- same work shift, same status (AWOL, annual leave, etc.). They also made sure that these records correctly reflected the emerging facility policies on annual leave, probationary controllers, scheduled overtime and so forth.

When this review showed that record amendments were necessary, Cullerton and Peterson suggested specific changes -- usually changes to logs and/or T&As -- by means of small notes attached to each controller's file, and passed the file to Robert Miller. Miller reviewed the suggested change, and, if he concurred, he passed the file to clerks to make the needed amendments. Generally, none of these amendments were dated or initialed to indicate when, and by whom, changes were made.

Controller lawyers obtained other physical evidence which suggested that a major review and alteration of attendance records occurred after those records were initially received by the Region.

In a deposition taken from the Center's time and attendance clerk, Marsha DiVenere, it was disclosed that whenever she amended a time and attendance (T&A) sheet, she would make a copy for herself on which she placed the date in the lower lefthand corner. Besides her personal copy, there was no notation on amended T&As indicating when the documents were changed.

When controller lawyers received DiVenere's personal copies of amended T&As, they discovered that over 100 T&As were amended during the month of October. Since these amended T&As appeared in the adverse action files of the fired controllers (initially sent to the Region between September 14 and October 1), they questioned how this could have happened since, according to all testimony or evidence previously disclosed by the FAA, the records were already in the possession of the Region.

These T&As also provided some idea of the magnitude of the October effort in the war room. An amended T&A was necessary either because: 1) the original T&A was filled out incorrectly, or 2) the document used by the clerk in filling out the original T&A, a sign-in log, had been changed and thus, the T&A needed to be changed.

It is doubtful that clerical errors could have accounted for many of the over-100 T&A amendments. An analysis of the subpoenaed records (see Section VI) reveals that the majority of the T&A amendments were necessitated because of a continuing course of corrections to sign-in logs as war room activities intensified.

This revelation contradicted Robert Miller's pre-hearing sworn deposition of July 24, 1984, wherein he acknowledged only three instances in which T&As had been changed after the documents were sent to the Region:

> Q: If, during that period of time, you wanted to make a change to any of the documents, how would you handle that?
>
> A: There were only, that I can recall, about three changes made; and I believe there was amended time and attendance documents that were made. I brought the changes up to Labor Relations and inserted them in the files; and after they had left the Center, that's all the changes I can recall that were made. I believe it was three T&As that had been amended, and I had brought them up and put them in the individual files.
>
> [*Deposition of Robert L. Miller, Behensky v. Department of Transportation, Federal Aviation Administration* – MSPB Docket Number CH075281F0979. July 24, 1984, p. 348]

By the time the remand MSPB hearing was held, Miller acknowledged that there were significantly more than three changes. He was fully aware that the lawyers for the fired controllers had obtained DiVenere's copies of the amended T&As which showed over 100 amendments:

> Q: Is it fair to say, Mr. Miller, that many, many of the Appellants in this consolidation had amended

> time and attendance records produced after their files were sent up to labor management relations and had those time and attendance documents placed in their files?
>
> A: Yes.
>
> Q: And isn't it true that you have always known that?
>
> A: Not that they were put in the files, no.
>
> [*Behensky v. Department of Transportation, Federal Aviation Administration* – Hearing. MSPB Docket Number CH075281F0979. August 21, 1984, p. 334]

Miller attempted to reconcile the two statements by stating that in his deposition he was referring only to those documents which he knew were inserted into the files. While on the surface this explanation contains a certain plausibility, a closer analysis in light of all other known facts brings conflicting questions quickly to mind.

Why under Miller's supervision would the Chicago Center amend and transmit over 100 T&As to the Region in October if not to have them included in adverse action files?, Did he not know or reasonably anticipate that they would go into the files? More revealing, why would Miller personally put three amended T&As in the file, and not expect that the other amended T&As would be handled the same way?

In the MSPB hearings, there never was a clear explanation regarding how documents altered after October 1 in the Center's war room found their way into the adverse action files at the Region. There was only vague testimony that amended documents were transported to the Region in envelopes. Never was any acknowledgment given that a massive number of amended documents were shipped to the Region in a systematic manner, as the Subcommittee has found.

Additionally, FAA maintained that Richard Shewfelt, manager of the Labor Relations office in the Region, had no knowledge that documents in the adverse action files of fired Chicago controllers were replaced with amended documents while those files were being compiled in his office.

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Upon reviewing subpoenaed materials and questioning FAA witnesses, the Subcommittee gained a clearer understanding of the record alteration and substitution process. A four-page memo (Exhibit 13) titled "Packages to Regional Office" was found. Four columns containing the names of the fired controllers appeared on each of the first three pages of the memo, the fourth page had two columns. The tops of the columns were identified as: "Box 1," "Box 2," "Box 3," etc., to "Box 14."

On the bottom of all but two of the columns appeared a date ranging from October 16, 1981 (Box 1) to November 5, 1981 (Box 12). (There is no date listed for Box 13 or Box 14; however, the Subcommittee has evidence indicating these boxes were shipped to the Region on November 6, 1981.)

It was suspected that this document detailed a second shipment of attendance records to the Region, a shipment never acknowledged by the FAA in MSPB hearings.

The Subcommittee found another document containing a list of fired controllers which gave further credence to the conclusion that there was a second shipment of files from the Center to the Region.

To the left of the controllers' names appeared two dates, one written in red ink, the other date written in green ink. Dates in red ink represented the date on which fired controllers' files were originally sent to the Region. The dates match those on the FAA list submitted to the MSPB (Exhibit 11) as the only shipment of records to the Region.

Dates in green ink represented the date the fired controllers' "amended" files were sent to the Region as part of the second shipment. The dates in green match those in the memo (Exhibit 13) found by the Subcommittee detailing the second shipment, and supplied the missing date of November 6, 1981, for those packages in Boxes 13 and 14.

Further, a Subcommittee review of a sampling of actual adverse action files at the MSPB turned up additional evidence to substantiate the fact that there was a second shipment of records.

In the files of five controllers, the Subcommittee located two sets of attendance records. In each case, one set of attendance records is internally inconsistent, the other set of records is internally consistent. (For further explanation, see Section VI.)

It is the Subcommittee's belief that the inconsistent set of records was part of the first shipment, whereas the second set of corrected, consistent records was the product of the October effort in the war room. The Subcommittee further believes that when the second set was received, Regional personnel, in at least these five instances, forgot to pull and discard the original set prior to forwarding the files to the MSPB.

Because an organized, complete second shipment of attendance records from the Center to the Region was never brought out in the MSPB hearings, it was the Subcommittee's objective to learn more about the second shipment of records during the Subcommittee's hearings on March 10 and 11, 1987.

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When Subcommittee Chairman Oberstar asked Robert Miller to explain Exhibit 13, the Subcommittee received an answer, which Miller retracted minutes later:

> Mr. Oberstar: Now, Mr. Miller and Mr. Shewfelt, let me send over to you a document entitled "Packages to Regional Office."
>
> Please take a close look at that document. It doesn't list a few envelopes, but rather it lists 14 columns of information which represent the contents of 14 boxes. Each of those columns has the names of 25 to 41 controllers at the Chicago Center who were fired, and a date in parentheses at the bottom, the earliest of which is October 16, 1981, and the latest is November 5, 1981.
>
> Now, has either one of you ever seen this list before? Do you have any idea what that list represents? Is it not possible that this document is the documentation of the changes made in the adverse action files?
>
> Mr. Miller: No, sir. I believe these were the documents--there was two requests that

> had come down and the initial request that was received from the Region by the facility was to send five copies, and we started by sending multiple copies. And then later the determination was made by Region they could be more effectively copied in the Region because we did not have the wherewithal to complete the documentation for each file. But these are the boxes that were sent to the Region of the actual original files.

[*Hearings* -- Committee on Public Works and Transportation, Subcommittee on Investigations and Oversight. Committee Print 100-35. March 10, 11 and September 14, 1987, p. 137.]

So, Miller's explanation to the Subcommittee was that the Center needed to send the originals to the Region so they could be copied and sent on to the MSPB. Representative Clinger sought to clarify Miller's answer and got a slightly different response but one that, like Miller's original response, was not consistent with other evidence in the Subcommittee's possession:

> Mr. Clinger: I am a little unclear as to what was contained in the boxes listed on this Exhibit 13. I think, Mr. Miller, you indicated these were the original--or these were adverse action files?
>
> Mr. Miller: Duplicates of the adverse action files, yes, sir.
>
> Mr. Clinger: Because you had previously sent--had you not previously sent the adverse action files to the Great Lakes Regional Office before these submissions were made?
>
> Mr. Miller: We did not send the originals, no, sir. If I said that, I stand corrected.
>
> Mr. Clinger: Okay.
>
> Mr. Miller: We sent duplicates that were made to--the initial packets were sent starting on September 14, and through October 1, and then the order for

> the--from the MSPB came down, and they wanted--I believe the initial order requested that we make five copies of each file, and we started trying to duplicate the files for the MSPB hearings. From the time we sent the original packets, there was a request, evidently, from MSPB that came down for five duplicates of each packet. And these were then started and sent, and we ended up sending, I believe 14 boxes.

[*Hearings* – March 11, 1987, p. 139.]

In Miller's second attempt to explain Exhibit 13 he changed his story and stated that it represented the Center's efforts in making five copies of the original files for the MSPB. In an attempt to further bolster his assertions, Miller even explained how the Center carried out this task:

> Mr. Clinger: And would the copies that then you sent subsequent to being informed they needed five copies of each one of them be presumably identical to the original copy?
>
> Mr. Miller: Yes, sir. They were Xeroxed from the files. The individual files were taken out and five duplicate copies made of the original file, and the same was done for the first packet for the single packets.

[*Hearings* -- March 11, 1987, p. 139, 140]

In fact, the Center, with the exception of a few early instances, did not reproduce the five copies for the MSPB let alone 14 boxes as identified in Exhibit 13. That job was carried out by Regional clerical staff after Labor Relations specialists had reviewed the records.

This explanation was in direct contradiction with Miller's previous MSPB testimony, in which he testified:

> Q: What you did was you made one complete set, you didn't make three or four or five for Mr. Shewfelt, you just had one of them and let him worry about the copying after a certain period of time?
>
> A: We started trying to make five sets and we didn't have -- I didn't have the manpower to complete that.
>
> Q: Or, the patience, I would think.
>
> A: Well, the manpower was the problem. Then we reverted to sending one set of complete documents.
>
> Q: Then how they were copied or if they were copied was no longer your problem?
>
> A: Well, no.
>
> [*Behensky* – August 21, 1984, p. 218]

As a result of further Subcommittee interviews, including one with Miller, it was agreed that the explanation Miller gave the Subcommittee during the March 11th hearing was inaccurate and there was indeed a second shipment of controller files. In perhaps a bit of irony, that fact was first admitted by Miller's wife, who had worked in the war room. She readily acknowledged, in a subsequent staff interview, that the list of controllers with the red and green ink dates was a scorecard to record the two document shipments.

In its September 14th hearing, the Subcommittee finally received an explanation on the record as to what was contained in Exhibit 13. In his opening statement, Miller acknowledged the problems with his earlier Subcommittee testimony:

> Since the Subcommittee's hearing last March, I have had the opportunity to review my testimony at that hearing and to compare it with my earlier statements in a hearing before the Merit Systems Protection Board and in an associated deposition. Clearly, there are inconsistencies in that testimony and I can fully appreciated your interest in seeking to harmonize those statements so that you can proceed to a committee report.
>
> [*Hearings* -- September 14, 1987, p. 192]

Also in his opening statement Miller acknowledged there was a second shipment of records, but he could not remember who ordered it:

> Although I am not sure as to what the impetus for this second set of files was, I have a general recollection that it was to assure that the Region had a complete, accurate and up to date file on the terminated controllers...It may have been a decision made in the Center or the Region to ship the second set of records, but my recollection is not specific on this point.
>
> [*Hearings* -- September 14, 1987, p. 193]

Throughout his testimony, Miller maintained that he did not remember who or what caused him to undertake the second review and second shipment of records:

> Mr. Oberstar: And just to be sure that we understand clearly: You are not able to identify for us an individual in the Regional office or any group of individuals or any specific phone conversation or telecon that resulted in what you understood to be a directive to undertake this second review of documents?
>
> Mr. Miller: Not a specific. No, sir, I do not.
>
> Mr. Oberstar: The idea for doing this second review was not yours. You have said that already.

Mr. Miller: I do not know whether it was or not, but I am sure that I did not do it specifically because I thought it would be a good idea. That is true.

[*Hearings* -- September 14, 1987, p. 213]

It is difficult for the Subcommittee to accept that Miller cannot recall who or what prompted this second review. After all, Miller spent all of August and September in directing the preparation of the files for the Region following George Gunter's review for purposes of making removal decisions. After finishing and forwarding the files, Miller directed yet another comprehensive review of the records -- a review which took an additional five weeks and involved poring over the same sets of documents to ensure completeness, consistency and accuracy.

To accomplish this monumental task, Miller extended the employment of two temporary workers and hired a family friend. Yet, according to Miller, he is unable to remember what prompted this activity.

Although Miller did not testify as to who ordered the second shipment of records, the Subcommittee finally established that the Chicago Center records were sent to the Region on two different occasions. This finding -- combined with the Subcommittee's analysis of the substantiative changes in the records -- provided conclusive proof, absent any credible rebuttal, that the original documents were so inadequate that the Chicago Center had to completely repeat the entire process.

With so many changes being made, the MSPB would eventually receive as "evidence relied upon" materials that were far different from those that George Gunter had reviewed in making his decision to fire controllers.

Despite Richard Shewfelt's certification in his letter transmitting the adverse action files to the MSPB, and in direct contradiction of Gunter's original MSPB testimony, the documents placed in evidence at the November 1982, MSPB proceedings could not have been the "evidence relied upon" in the controller firings.

The first shipment, the only one the FAA acknowledged during the MSPB hearings, occurred between September 14 and October 1, 1981. The second shipment occurred after war room personnel spent all of October and part of November correcting the many inconsistencies and inaccuracies contained in the first shipment.

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Since the Subcommittee was not going to find out who ordered the second review and shipment of controller records from Miller, the Subcommittee sought to discover who in the Region was aware of the second shipment.

The Subcommittee received testimony from three of the four labor relations specialists who processed the adverse action files at the FAA's Great Lakes Regional office. Processing the files involved reviewing the records for completeness and internal consistency, arranging them in a pre-determined order, and directing their reproduction and assembly for shipment to the MSPB.

Specialists Mary DuBois and Jack Brunati denied any knowledge of a second shipment, but acknowledged that they had worked on the

Chicago Center's records. Labor Relations Specialist Joseph Yokley admitted that he knew of the second shipment (after denying such knowledge in two previous staff interviews):

Mr. Clinger:	We have now had testimony that there were two major deliveries of controller cases from the Chicago Center, the second shipment being a revised, amended and updated version of what had been sent out in the first shipment. Were you aware that there were in fact two separate shipments of essentially the same controller cases?
Mr. Yokley:	Yes...
Mr. Clinger:	Were you aware of why that occurred?
Mr. Yokley:	As I recall, I had made calls to Bob Miller, Mr. Miller at the Chicago Center, based on the records that I had reviewed from the Chicago Center. And I had requested certain documents, and certain verifications, and things of that nature. And I do not know how many contacts that I had made with Miller. But someone, and I say someone because I do not know who exactly made the decision, said since we are having to provide you with additional information and there might be some incomplete folders or things of that nature, we will make up another set of folders which will have all of the documents in them.

[*Hearings* -- September 14, 1987, p. 245]

Although Yokley admitted to knowing of a second shipment, he initially testified that he did not remember actually seeing the second shipment:

Mr. Imus:	Mr. Yokley, what happened to the first shipment of Chicago records -- you are aware that there was a second shipment--what did you do with the first shipment?

Mr. Yokley: I am not aware that -- well, I did not see the second shipment. I knew that there was one, that a decision was made. And I do not recall what happened to the first records.

[*Hearings* -- September 14, 1987, p. 249]

Yokley went on to testify that in addition to not seeing the second shipment of records, he did not remember discussing it with Shewfelt or the other labor relations specialists who reviewed the Chicago records.

The Subcommittee found that these statements only raised additional questions. It would be only logical that the labor relations specialists would stop processing the records in the first shipment, knowing a second shipment of records was coming. Conversely, if no one other than Yokley was aware of the second shipment, it would seem that the first set of records would have been completely processed and sent to the MSPB. Further, Yokley could not explain why, given his version of events, the MSPB did not end up with two sets of records for every Chicago controller.

After the Subcommittee attempted several times to clarify Yokley's testimony, each time to no avail, he was excused from the hearing room. However, before the next witness appeared, Yokley returned to the hearing with the following explanation:

Mr. Yokley: Okay. First of all, I would like to apologize to the committee for not recalling what happened six years ago. But going through discussions and thinking about things, there is some recall. And the question was asked about the process used in replacing the original folders with the second set that came in.

> And I remember now, and my testimony still stands that I set these folders aside, and when the information came in, they went forward to this holding room. But now I remember what happened once those folders went to the holding room. Apparently, and here again as I stated before, the other specialists or someone must have gotten the word to hold Chicago Center folders. Because I recall replacing, pulling some of the old folders out and replacing them with new folders.

[*Hearings* -- September 14, 1987, p. 259]

Under further questioning, Yokley stated that the entire first shipment of Chicago records was placed in a holding room and was probably destroyed after the second shipment arrived at the Region. Once again, the Subcommittee attempted to learn who else in the Region knew of this unusual handling of the Chicago records:

> Mr. Oberstar: Now, you knew that there was a second set of files coming. Did Mr. Shewfelt know that as well?
>
> Mr. Yokley: I would have to say that I do not know.
>
> Mr. Oberstar: Did Mr. Shewfelt know that you and the other specialists were holding aside in a separate holding cell the Chicago Center files?
>
> Mr. Yokley: I do not know. I did not tell him.
>
> Mr. Oberstar: You do not know then whether he was informed of the separate treatment given these Chicago files?
>
> Mr. Yokley: No, I do not know.

[*Hearings* -- September 14, 1987, p. 261]

It is unlikely that Joseph Yokley, one of four labor relations specialists, would be the only one in the Region to have known that the Chicago Center was sending a complete, second shipment of Chicago records.

Presumably, Yokley's supervisor, Richard Shewfelt, who was responsible for compiling the files in order to meet MSPB deadlines, would have been informed that the Chicago records were being redone and, therefore, would be delayed. Why, on October 23, would Shewfelt have requested an extension from the MSPB if the routine processing of the first records would have easily met the Board's original deadline?

The Subcommittee for the following reasons concludes that it is very likely that Shewfelt (and other Regional officials) knew of the problems of consistency and accuracy in the records that led to the second shipment.

First, in early September 1981, a majority of the fired controllers from the Chicago Center wrote to George Gunter, Chief of the Chicago Center, requesting three items: 1) a copy of the oral presentation summary (a document prepared by the hearing official summarizing each controller's oral reply appearance); 2) a copy of all orders affecting the removal process; and 3) copies of all materials used to support the removal action. Gunter forwarded the controllers' requests to Richard Shewfelt.

At the end of September, Shewfelt wrote the controllers back and stated that due to his office's present work load, there would be a delay in responding to the controllers' request.

Approximately 30 days later, Shewfelt provided the controllers with information packets, but not all the information requested.

Included in Shewfelt's packet to each controller were: the letter of proposed dismissal; the letter of dismissal; post office receipts; copies of any letters written to Gunter from the controllers; Gunter's reply to those letters; a copy of the oral hearing report; the controller's appointment affidavit; a telegram from FAA Washington to FAA regional offices and centers; a pre-strike letter to controllers from Administrator Helms; and a Mailgram that was sent to controllers from management at the beginning of the strike.

The response received by the controllers matched the contents of the MSPB's adverse action file with the one major exception: the attendance records the FAA relied upon to dismiss the controllers were missing.

Why did the FAA include certain information, the majority of which was copies of correspondence already in the possession of the controllers, but not any of the materials used to support the removal action?

Apparently the FAA was not too overwhelmed to respond to the request; the fact is that the FAA furnished all the other materials requested. It would not have been that time-consuming to provide the fired controllers with everything they requested. Even if the reason was lack of manpower, why send the controllers material they already possessed (letters, postal receipts, etc.) and leave out documents that they did not have?

The testimony and other evidence before the Subcommittee suggests that the reason was that the attendance records were still being amended by Robert Miller and others in the war room. Certainly, Shewfelt could not very well write back to the controllers and explain that the evidence relied upon to fire them was not yet available because it was incomplete, inaccurate and in the process of being created or corrected. Instead, it appears that the FAA deliberately chose to ignore that portion of the controllers' request with no explanation given.

None of the labor relations specialists could provide the Subcommittee with a logical explanation as to why the controllers did not receive the documents they requested.

A second piece of evidence which led the Subcommittee to believe that Shewfelt knew of the record alteration and substitution process was provided by the testimony of Labor Relations Specialist Jack Brunati.

According to Brunati, Shewfelt worked closely and conversed daily with his subordinates. In fact, Brunati stated that it would have been unusual for Shewfelt not to have been aware of the problems with the Chicago records:

> Mr. Imus: In terms of your work as a labor relations specialist, how often would you deal with Mr. Shewfelt, your supervisor, on a daily basis?
>
> Mr. Brunati: It was on a daily basis. We were in the branch together.
>
> Mr. Imus: So he kept in pretty close contact with you then about how the work was progressing as you were trying to meet the MSPB deadlines?

Mr. Brunati: Yes...

Mr. Goebel: Were you under the impression that he knew of the problems or the extent of the problems with the Chicago Center records?

Mr. Brunati: Yes.

[*Hearings* -- September 14, 1987, p. 265]

Finally, in 1984, Shewfelt was first questioned during MSPB proceedings regarding his handling of the records. He vehemently denied the serious accusations leveled against him regarding his role. Yet since those charges, and even with the advent of a Congressional investigation, Shewfelt testified before the Subcommittee that, from the MSPB remand hearing up to the time of his testimony before the Subcommittee, he had never asked his subordinates about what actually occurred. It would seem that if Shewfelt was truly oblivious to any improper activity, he would have, at the very least in retrospect, tried to ascertain on his own what occurred to the records while in his custody.

When Shewfelt appeared before the Subcommittee, he continued to maintain that he did not know that the Chicago records had been replaced in a wholesale manner. However, Shewfelt did acknowledge that he knew the original Chicago records contained many discrepancies. [*Hearings* -- September 14, 1987, p. 278]

In testimony, Shewfelt and other Regional officials admitted only that documents were flawed. If this were true, the Subcommittee questions if these officials would have chosen to use attendance records -- which they knew were flawed -- as the primary documentary evidence submitted during MSPB hearings to support firing controllers.

To the contrary, it is more reasonable to conclude that since the FAA did use the attendance records as principal justification to support removals, these officials had confidence in what these documents would reflect, knowing that changes and corrections had, in fact, been made.

Conclusion

To understand the significance and importance of the Subcommittee's findings regarding the record substitution process, one needs to review FAA's original statements regarding these records.

In submitting those records to the MSPB, Richard Shewfelt certified that they represented the "evidence relied upon" by the deciding official to dismiss controllers and that "copies of all materials are true copies."

It is unclear why the particular phrase "evidence relied upon" was selected for the Shewfelt letter. Both the language of the statute and DOT/FAA Order 3770.2B, directing Agency personnel actions, including MSPB appeals, required that the Agency's response to the MSPB include "all documents contained in the agency record of the proceedings."

The phrase "evidence relied upon" appeared nowhere in statute or regulation, but its choice for inclusion in the Shewfelt letter might very well have dictated the tortured events and misleading testimony which followed. It seems at least plausible that certifying the attendance records as "documents contained in the agency record" would have enabled FAA to explain in testimony before the MSPB the need for, nature and extent of the war room process without resorting to the fictions that followed.

There would be risks involved, of course, in employing that method of presenting the evidence to the MSPB. Incomplete or error-riddled records could not be expected to carry, alone, the Agency's burden of establishing a prima facie case against the fired controllers.

In most cases, it is assumed that the FAA would have needed to place shift supervisors (the persons who would normally prepare the records) on the witness stand in order that their testimony would bolster the evidentiary value of the documents. Had that been done, of course, the supervisors would have been subjected to extensive cross-examination regarding their role in preparation of the records and their recollection of detailed events that occurred during the most hectic time of operations in the Chicago Center's history. Any inconsistency or equivocations could have been used by controllers' attorneys to raise doubts about the validity of their clients' dismissals. The FAA chose not to follow this course.

At the initial MSPB hearing, the FAA attempted to use these personnel records as the primary documentary evidence proving the absence of controllers and, with the exception of George Gunter's testimony, declined to present other credible testimony to describe the truth of what the records represented. The records were described by Gunter, and in the presence of FAA's technical advisor, Robert Miller, as "contemporaneous records...kept in the ordinary course of business."

If they had, in fact, been contemporaneous records, constituting the evidence relied upon, the attendance documents, with a minimum of explanatory testimony, might have constructed an unimpeachable case. Through its own machinations, the Agency instead found its prima facie case subject to repeated challenges and damaging disclosures.

The Subcommittee, through testimony and documents previously shielded from controllers' attorneys and the MSPB, shed even more light on the record alteration and substitution process.

The Subcommittee concludes that: (1) in October-November 1981, there was a systematic, organized effort undertaken in the war room to check and alter attendance records of fired controllers after copies had initially been shipped to the Region; (2) the records that were certified by Richard Shewfelt to the MSPB as the "evidence relied upon" and that were introduced into evidence as "contemporaneous records" were, in truth, neither; (3) FAA officials, under repeated questioning, failed to disclose, and in fact deliberately concealed, the extent to which records were altered or created after the controllers were fired; and (4) it was very unlikely that such activity could have occurred without the knowledge and concurrence of Richard Shewfelt as the official responsible for compiling the adverse action files, and other Regional officials including the Regional Counsel's office and the Air Traffic Division.

MILLER SIGNATURE STAMP

The controversy surrounding the addition of a Robert L. Miller stamped signature on certain sign-in logs first arose in 1984 after the MSPB ordered a new hearing to focus on document discrepancies of the fired Chicago Center controllers.

In the remand order, the MSPB instructed the presiding official to determine the circumstances surrounding the creation of the documents. The Board wrote:

> In *Borninkhof* we listed eight factors to be considered in assessing the reliability of written hearsay. We add that the extent of the identifying witness' personal knowledge, if any, of the records' preparation should be considered. Also to be considered is when documents were prepared, since reasonably contemporaneous entries or documents help to insure reliability, and whether the records are complete.
>
> [*Behensky v. Department of Transportation, Federal Aviation Administration* – Remand Order. MSPB Docket Number CH075281F0979. February 8, 1984.]

The eight factors enumerated by the MSPB in the *Borninkhof* case, to be considered in assigning weight to hearsay evidence, particularly administrative records, included: 1) the availability of persons with first-hand knowledge to testify; 2) whether the statements of the out-of-court declarant were signed or in affidavit form, or witnessed; 3) the agency's reasons for failing to obtain signed or sworn statements; 4) whether the declarant was a disinterested observer of events and his statements routinely made; 5) consistency of declarant's accounts, internally and with other relevant information; 6) whether the agency record otherwise corroborates the declarant's statements; 7) absence of contradictory evidence; and 8) credibility of the declarant at the time of making the statement.

For the remand hearing, the FAA was required to produce the original sign-in logs. A sign-in log is a two-sided document which records a controller's shift assignment and actual presence on the front side (Exhibit 17). On the back, the supervisor lists incidents (e.g., equipment outages) which may have occurred during that shift, and a supervisor signature block is included at the bottom. In the first MSPB hearings, only photocopies of the front page of the sign-in logs were included in the files.

Lawyers for controllers were anticipating that the back of the sign-in logs were unsigned. They would then argue that the logs were inadmissible "hearsay" documents because they did not, at a minimum, meet the *Borninkhof* requirements for signature or witnessing.

However, when the lawyers received the original documents, they noticed some of the documents contained the stamped signature "Robert L. Miller." Further, they also noticed the stamp bled through so that a mirror image of Miller's signature could be seen on the front side of both the originals and copies of the sign-in logs (Exhibit 18).

Because none of the copies in the files previously submitted to the MSPB showed this bleed-through (Exhibit 17), the lawyers argued that the documents had been tampered with after the MSPB proceedings began, and probably, just before the FAA was required to submit the original logs to the Board.

In his deposition prior to the MSPB remand hearing, Miller explained why the stamp was used by stating: "After reviewing the sign-in sheets and when I believed they were correct from what I had reviewed, I told them they could stamp them before putting them in the file." [*Deposition* – July 23, 1984, p. 38]

Miller further identified those individuals who he said used the stamp at his direction. Those persons he named were: Ray Cullerton, Peter Peterson, Marsha DiVenere, Clyde Campbell, Marsha Weist and his wife, Beverly Miller -- all of whom worked in or had access to the war room at various times during the post-strike period.

However, all of the persons mentioned by Miller testified in sworn depositions or under oath during MSPB proceedings that they never used his stamp on the sign-in logs.

Attempting to minimize the significance of either the presence or absence of a signature, FAA officials stated in MSPB testimony that the supervisor's signature on the back of the sign-in log has nothing to do with information contained on the front side of the log. This sworn testimony, which was repeated during the Subcommittee's hearing, is totally inconsistent with FAA's own guidelines, which state:

> ...area managers/area supervisors are responsible for ensuring that specialists accurately complete the Personnel Log when signing on and off duty for time and attendance recording. FAA Form 7230-4, or local facsimile, is the primary document used for time and attendance purposes.
>
> [Facility Operations and Administration 7210.3, 224]

Further, FAA guidelines regarding preparation of Form 7230-4 provides guidance on how the form should be filled out, including what entries are to be made on the personnel side of the log. One of the concluding steps in the guidelines states:

> The employee responsible for the watch schedule shall sign the form in ink or indelible pencil. The Air Traffic manager shall initial the form after reviewing the entries if the record describes the operation of the facility adequately.
>
> [Facility Operations and Administration 7210.3, 465]

These are obvious inconsistencies between the clear wording of FAA regulations and FAA testimony describing them. By denying the certifying signature had anything to do with the personnel side of the sign-in log, the FAA was trying to ameliorate the controversy. However, even that strategy was unsuccessful.

The signature stamp issue was so damaging to FAA's case that shortly after the controllers' lawyers raised it, MSPB Presiding Official Stephen Manrose suggested to the FAA attorneys, off the record, that they settle the case. After a weekend in which discussions among FAA Regional and Washington officials were held, the MSPB hearings resumed and no settlement was ever made. Manrose never referenced the stamp controversy in his decision.

Yet, because of the many inconsistencies which surfaced during the MSPB hearing, the Subcommittee had difficulty accepting Miller's and the FAA's explanation of why, how and when the stamp was placed on the records.

First, less than 50 percent of the sign-in logs were stamped with Miller's signature. Yet, every sign-in log was reviewed prior to forwarding them to the Great Lakes Regional office. If the purpose of the stamp was to show that a review of the logs had been completed, as Miller said, why wasn't a stamp put on every log?

Second, why stamp the documents with Miller's name on the back page of the log in the certifying supervisor's blank? Why was not another means used to indicate a completed review?

Finally, the Subcommittee's review of the logs with the Miller signature stamp found that not one contained the signature of a working controller. Conversely, the logs that had the signatures of working controllers did not have Miller's stamp, but rather were certified by an actual supervisor, as one would expect according to the normal FAA practice. It became obvious that the logs which bear the Miller stamp were never actual working logs, but rather were the logs manufactured in October by war room personnel for the purpose of MSPB proceedings.

In response to the Subcommittee's questions, Miller repeated his MSPB testimony as to why the stamp was used. Miller said:

> The discussion in the war room was that when we completed all the reviews, that the signature on the back would show that they were all completed.
>
> [*Hearings* -- March 11, 1987, p. 153]

But then, under intensive questioning by Chairman Oberstar, Miller totally reversed his position, claiming that he did not give anyone orders to stamp the documents because he did not even know there was a stamp of his signature.

Miller claimed his secretary, Marge Elliot, had two stamps made without his knowledge and that he had first discovered a stamp or stamps (the testimony is not clear on this point) when they were cleaning out the war room, which would have been mid-November:

> Mr. Oberstar: Who kept the stamp?
>
> Mr. Miller: Originally, my secretary in the quality assurance office had two stamps made. And the reason she had them made, she told me later, was that I was not there to initial or to sign the familiarization trip requests, and that was one of the responsibilities of the office at the time, and she had two stamps made and one of them did appear in the war room.
>
> Mr. Oberstar: And that stamp was kept in the war room at all times?
>
> Mr. Miller: I do not know until we were disbanding the war room. I located it in the desk in the war room. I do not know how long it was there...
>
> Mr. Oberstar: You didn't give her authority to use it. She didn't have authority. Who did have the authority? You? You, obviously, it's your stamp. Why would you have used the stamp instead of a signature?
>
> Mr. Miller: I had no reason to. I did not know the stamps existed until we were cleaning the desk out of the war room.
>
> Mr. Oberstar: You did not know of the existence of the stamp?
>
> Mr. Miller: That's correct.
>
> [*Hearings* -- March 11, 1987, p. 153, 154]

Obviously, this statement contradicted Miller's MSPB and previous Subcommittee testimony. Additionally, in subsequent interviews by Subcommittee staff, Marge Elliot stated she had nothing to do with procuring stamps of Miller's signature.

During Miller's second appearance before the Subcommittee, he again changed his story. He claimed it was September or early October when he first discovered his signature stamp in the war room, not mid-November. Miller stated that when he discovered the stamp, he took it home and destroyed it. He further learned that his wife had a different signature stamp at home and that Marge Elliot possessed yet another stamp with his signature. It was this third stamp which Miller believes was used to stamp the sign-in logs.

(In his second appearance before the Subcommittee to clarify his earlier testimony, Miller's statements only managed to increase the number of discrepancies. In his March testimony, when asked if he had three stamps, Miller said he did not. He further stated during the March hearing that he destroyed one of the stamps. Yet, during the September hearing he presented to the Subcommittee two stamps. Does this mean he actually had three stamps?)

Miller stood by his statement that the first time he even knew he possessed a signature stamp, whether at home or the office, was in the fall of 1981. (Miller's explanations flatly contradict statements made by Marge Elliot to Subcommittee investigators. It further strains credibility to believe a person could be oblivious to the fact that there are three stamps of his signature.)

Regardless of the veracity of Miller's claim as to when he became aware of any stamp's existence, there still remains no satisfactory explanation or reconciliation of the two stories told by Miller to the MSPB and the Subcommittee. A memory lapse could not account for the two widely disparate claims, both made under oath.

In the Subcommittee's September hearing, Miller still could not tell the Subcommittee, if every log had been reviewed, why less than half of the logs had been stamped. Nor could Miller explain why all of the individuals he identified as having used the stamp denied even seeing a stamp in the war room.

Conclusion

As Subcommittee investigators attempted to unravel the story of how a stamped signature of Robert L. Miller first wound up on documents submitted a second time as evidence to the MSPB, an FAA lawyer jokingly explained it by suggesting a "poltergeist" used the stamp. Although this statement was made in jest, it is no less supported by the evidence than any other version told under oath to either the MSPB or the Subcommittee.

If the stamp was used as routinely as suggested by Miller, one has to wonder why his testimony was filled with so many inaccuracies and inconsistencies. It would seem a simple matter for the FAA to bring forward the person who used the stamp; yet the Agency has been unable to produce one witness who used it, or who could even provide a plausible explanation of its use.

The Subcommittee is unable to state authoritatively who used Miller's stamp or during what time period his stamp was affixed to the documents. Based upon the available evidence, however, the

Subcommittee can theorize about the events which led to the placing of the stamp on the documents. Because the stamp did not show up on the one-sided sign-in log copies in any of the files during the original MSPB hearings, clearly the stamp was not used before the first part of November 1981 -- which was the time the Chicago Center finished sending controller files to the Region for forwarding to the MSPB.

At some time between November 1981, and the initiation of the MSPB remand hearings in August 1984, something occurred that made the use of the signature stamp gain importance.

The most plausible explanation is the MSPB remand order, demanding production of copies of both sides of the sign-in logs. While previously there may have been no reason to stamp Miller's signature, the remand order and the significance of the *Borninkhof* analysis, combined, would have provided the incentive to "certify" the documents for the remand hearing. It could have been done with the intent of meeting the *Borninkhof* test or it could have been done to give the logs manufactured in the war room an appearance of greater authenticity.

Although this scenario cannot be conclusively proven, it is certainly more credible than any version told by Miller, and in contrast, is not directly refuted by any evidence to the contrary.

THE JEROME IWANSKI CASE

During the pre-strike period, the Chicago Center received direction from the Great Lakes Regional Office that in the event of a strike all previously approved employee annual leave was to be cancelled. Chicago Center supervisors were to meet with their controllers and inform them of this decision, and to document having made contact with each employee. In most cases, notification was carried out by telephone, with no standard means of verification used by Chicago Center supervisors. A memorandum to the file seemed to be the most commonly employed method of documentation.

All those on annual leave who did not voluntarily cut short their leave and report to the Center, whether notified of leave cancellation or not, were sent letters charging them with striking on August 3 or August 5, depending on whether the letter was mailed before or after the President's proclamation. If a controller returned from vacation after August 7 or 8 and called the facility, he was told that he could not return to work but must go to an oral hearing to explain his absence.

At the oral hearing, the controller presented his case to a designated hearing official who only had the authority to indicate whether or not "further facility discussion" was required. This is contrary to federal regulations which state hearing officials should "have the authority to either make or recommend a final decision on the proposed action" (Exhibit 3). Chicago Center management did not delegate that authority to hearing officials.

What, then, did the facility do when it received a hearing official's recommendation for "further facility discussion"? David Erickson was the Center official charged with reviewing such recommendations. In most cases, Erickson contacted the controller's supervisor in the facility to get a statement as to whether the individual had been notified of leave cancellation.

In a few cases, Erickson checked out the controller's statement as to where he went on vacation by contacting the place of vacation directly. The Subcommittee has found no case, however, in which the controller himself was contacted by Erickson as to details of leave absence.

Despite these efforts, cancellation of annual leave was at issue in some 44 controller dismissals. Controllers claimed that they were never notified of their leave cancellation or, when learning of cancellation after the strike began, were barred from returning to work at the Center. The majority of these controllers either were reinstated with back pay and benefits by the MSPB or reached a settlement with the FAA.

The Subcommittee believes the case of fired controller Jerome Iwanski illustrates the extremes to which the Chicago Center and Great Lakes Regional Office went in keeping fired controllers from being reinstated, and the importance attached by Agency officials to having an impeccable paper trail -- developed after the fact -- upon which to justify previously made removal decisions.

This case shows an instance in which the FAA created "evidence" and misrepresented that evidence before the MSPB, rather than admit to a mistake that could have led to the reinstatement of a fired controller. It also demonstrates, perhaps, the extent to which FAA management/union relations had deteriorated, particularly at the Chicago Center, and the resolve on the part of Chicago Center and Great Lakes Regional officials that controllers who did not return by their deadline should never be reinstated.

Iwanski's proposed letter of removal stated that he was fired because he did not report for his scheduled shift assignment which began on August 6 at 0700. However, at Iwanski's oral hearing, it was pointed out that Iwanski was on approved annual leave through August 8th.

Approximately one week after Iwanski's oral hearing, three supervisors wrote memos "to the record" regarding Iwanski (Exhibit 19). Two memos stated that there were unsuccessful attempts made to reach Iwanski to cancel his annual leave and the third memo reported that Iwanski was seen on the picket line. On September 2, George Gunter sent Iwanski his letter of termination.

During the MSPB hearing, the FAA attorney, Ms. Weikel, persuaded Presiding Official Stephen Manrose to accept into evidence an additional, undated memo which she claimed was inadvertently left out of his adverse action file when it was sent to the MSPB (Exhibit 15). Subsequent to MSPB acceptance of that memo into the record, the following testimony was given:

> BY MS. WEIKEL:
>
> Q: Mr. Gunter, I'll show you a copy of what was entered into Mr. Iwanski's file, the document from Mr. Wayne Winslow that was added to his file that was originally left out and ask if you'd carefully read that document. All right?

A: Yes.

Q: Now, calling your attention to the final paragraph that Mr. Winslow wrote, did that paragraph have any bearing on your decision to terminate Mr. Iwanski?

A: Yes.

Q: And what bearing did it have?

A: That he knew that annual leave was cancelled if we had a strike or a job action.

[*Former Air Traffic Controllers v. Department of Transportation, Federal Aviation Administration* – Hearing. November 9, 1982. Volume VI. p. 55]

Thus, George Gunter stated that this undated memo from Wayne Winslow provided the basis for his firing Iwanski since it showed that he knew that his leave was cancelled in the event of a strike. However, the Subcommittee has reached the conclusion this important memo was written sometime in mid-December and, therefore, could not have been considered by Gunter when he fired Iwanski.

This conclusion, which Gunter would eventually accept at the Subcommittee hearings, was based upon the following information:

-- Iwanski's case, along with other controllers who were fired while on annual leave, was discussed at a meeting held on December 7, 1981, among Gunter, Robert Miller, Richard Shewfelt and Wesley Walker. At that meeting, Iwanski's case was identified as one of the ten that needed "additional data" (Exhibit 14). However, no additional dated memos or other documentation, other than the undated memo from Winslow accepted into the record by Presiding Officer Manrose, appeared in Iwanski's adverse action file.

-- In the subpoenaed materials, Subcommittee investigators were able to find an envelope, separate and apart from the contents of any adverse action file, for nearly every case that was discussed at the December 7th meeting. The front of Iwanski's envelope had the notation "received statement 12/9/81" and "EH Crew 3 Wayne Winslow" (Exhibit 16). Again, no other statement, except the undated one, has been located in the Iwanski file.

-- The original Iwanski file submission to the MSPB contained one memo from Winslow dated August 28, regarding leave cancellation (Exhibit 19). It seems unlikely that Winslow would write another memo regarding Iwanski during the same time period. Why didn't Winslow include all the information, particularly that most critical to the case, on the August 28th memo?

-- A comparison between Winslow's undated memo (Exhibit 15) and Winslow's August 28th memo (Exhibit 19) indicates remarkable similarities with the exception of the third paragraph. The third paragraph states: "Due to discussions on a daily basis, prior to August 2, 1981, *in my mind,* Mr. Iwanski was aware that if a job action did occur, his annual leave was cancelled." (emphasis added) By far and away, this paragraph, which was missing in the earlier memo, is the most damaging to Iwanski's case. Why would the most damaging memo be excluded from the original adverse action file?

-- This key third paragraph in the undated memo is remarkably similar to memos found for other controllers. In all of these memos, a common phrase appears at the very end of the document implying that it is the writers' opinion that leave was cancelled (Exhibit 16). However, unlike Iwanski's memo, all of these memos are dated after December 7. Further, the controller cases about which the memos were written, like Iwanski, were identified at the December 7th meeting as needing more data.

-- Conversely, the Subcommittee has been unable to find any memo dated in August that has the "in my mind" phrase.

When confronted with all these factors during the Subcommittee hearing, Gunter agreed with the Subcommittee's conclusion:

> Mr. Oberstar: But, isn't it very likely, given the sequence of events, that this was a document created much later in the process, probably after the December 7th meeting and closer to that mid-December date that we were talking about earlier?
>
> Mr. Gunter: It appears, yes, sir.
>
> [*Hearings* -- March 11, 1987, p. 150]

Conclusion

Despite Gunter's MSPB testimony and the damaging Winslow memo, Iwanski won his case before the MSPB. This case, nonetheless, clearly shows the attitude that prevailed throughout the Chicago Center and the Great Lakes Region.

FAA officials quite correctly and logically wanted to have the strongest case possible against each of the fired controllers. At times, however, that zeal led to conduct that clearly stepped over the line separating responsible prosecutorial conduct from a "win at all cost" vindictiveness.

When a controller was dismissed and the evidence may have been insufficient to sustain a removal, Center and Regional officials refused to concede or argue around the inadequacies of a case and instead, chose to create additional "evidence" and then misrepresent that material in testimony before the MSPB.

DETAILED ANALYSIS OF AMENDMENTS TO THE RECORDS

Attendance Records: What are They?

The watch schedule shows the scheduled shift of each controller in an area of the facility. This schedule is developed well in advance (about 20 days) of assigned shifts. All controllers are shown on the watch schedule; but if a controller is scheduled for leave or training, the scheduled shift is "lined out" and is replaced by the leave/training status.

On the day before a scheduled shift, the team supervisor in an area uses the watch schedule as the basis for scheduling each controller on his team to work the next day. He does this by printing the name of each controller on a sign-in log (Form 7230-4). If the controller is on annual leave, his name is printed at the bottom of the log, showing annual leave status (A/L). When the controller arrives for work the next day, he simply signs next to his printed name and indicates the time "on." When he completes the shift, he simply puts down the time "off."

A clerk refers to the logs when completing the time and attendance (T&A) report used to document time for pay purposes.

What Were the Record Problems?

The Subcommittee's review of attendance records shows that, in the first shipment of records, there were both clerical errors and errors resulting from policy changes or refinements. The following exemplify the types of errors contained in the records:

- Several controllers (mostly new hires and those in training) were not shown on the attendance records. These errors were usually discovered during oral hearings when the hearing official presented the watch schedules and logs to the controllers and their names were missing.

- Many shifts were misread from the watch schedule by persons entering names on the logs; usually, these mistakes were carried over to the time and attendance report (T&A) since they were made up from the logs. There were hundreds of such errors as represented by the number of amendments needed to eventually correct them.

- The work status (e.g., sick leave, annual leave, absent without leave [AWOL], etc.) of most controllers in the facility was accidentally omitted from the logs on August 6 and 7. Many controllers commented on these omissions at their oral hearings and most were corrected before the first shipment to the Region.

- Somehow, two logs were made up for the same shift/same area for August 4. Thus, many controllers' names were listed twice on these shifts. This major error was not caught until the second shipment.

- The T&As for pay period #17 (including the week of and the week before the strike) were not shown to controllers at their oral hearings and thus the numerous errors in these records were not pointed out by controllers.

- The post-strike annual leave policy at the Center was not finalized until after attendance records for the first few days were completed; thus, in the first shipment, of adverse action files to the Region, certain controllers' records showed AWOL for August 3-5, when they should have shown A/L for consistency with the President's policy.

- Probationary employees (those with less than one year federal service) were given a status of AWOL in their initial logs and T&As. These records were subsequently amended to show not on payroll (NOP) as status -- an apparent policy refinement. (Probationary employees, by law, did not have a right to appeal to the MSPB; therefore, their records were not at issue during those proceedings.)

- Scheduled Overtime (SOT) represents a day of leave that controllers apparently earn from working extra shifts. Controllers were initially not declared AWOL on these SOT days; but in a subsequent policy refinement, they were declared AWOL on the premise that on an SOT day they supposedly report first to work and then are allowed off. If they had reported to work, they would have been told that their SOT had been cancelled. Logs and T&As were amended during the October-November war room activities to change SOT to AWOL.

Most of these errors were not corrected when the Center originally sent the adverse action file to the Regional office from September 14 to October 1.

At this time, all controller records had been shipped to the Great Lakes Region Office presumably for final review and submission to MSPB. As explained in detail in Section III of this Report, the Subcommittee uncovered evidence of a second review of these records by war room personnel and a second shipment of additional and corrected documents to the Region.

How Many Amendments Were Made?

In the first shipment, the attendance records were completed only through the first week or two of the strike. For the second shipment, these records were extended to cover the full time from beginning of strike to the date of each controller's final removal. Clyde Campbell served as a clerk who used the watch schedule as the basis for creating sign-in logs showing the names and assignments of fired controllers.

The decision (of unknown origin) to extend the coverage of records to the controller's final removal date created a massive amount of work for those in the war room. If, for example, a controller's removal date was September 15 (an average date), his attendance records would consist of about 41 records -- 30 logs (one for each scheduled work day), four T&A's, (bi-weekly) and seven watch schedules (weekly).

These records would have to be copied by Campbell; reviewed by Cullerton, Peterson and Miller; amended, if necessary, by clerks; and compiled, copied and shipped to the Region on a tight time schedule. If there were, on average, about 41 records for each controller multiplied by the 431 controllers whose records were being readied for MSPB, the total record volume would be about 17,700.

The changes resulting from this amendment process were numerous; for the most part, it would be misleading to characterize those records as prepared "in the ordinary course of business." Business was anything but "ordinary" at the Center during the post-strike weeks; the war room activities were but one example of the disruptions in normal Center operations.

The first week or two of the strike represented the crucial time period for determining the status of absent controllers. Most controllers, even those on approved annual leave, were declared AWOL the first week of the strike, or shortly thereafter. Once declared AWOL, a controller remained in that status until final separation. Therefore, amendments made to records for the first week or two of the strike are those most pertinent to controller status and ultimate removal.

Generally, the watch schedule was chosen by the Chicago Center as the master schedule for the time and place each controller was supposed to work; both logs and T&As were made consistent with the watch schedule for time and place. However, the watch schedule did not show the most crucial strike-related information for controllers: their actual status -- sick leave, annual leave, AWOL, working, etc. This status was shown only on the logs and the T&As.

The following brief summary of amendments to sign-in logs and T&As shows the number of changes that were made on records during the first week of the strike (August 3-7). As explained previously, these amendments were actually being made in October and November.

Sign-in logs contained the following number of substantive amendments for the first five days:

Date	No.
Aug. 3	42
Aug. 4	47
Aug. 5	44
Aug. 6	50
Aug. 7	40
Total Number	223

The T&As of 192 controllers were amended for the first week of the strike (pay period 17). However, the number of substantive amendments is more than this since (1) some of these T&As were amended for more than one purpose and (2) some of these T&As were amended several times (and the interim amendments discarded by FAA).

In addition to these amendments, the T&As for 137 controllers were amended during pay period 18, covering week two and three; and for pay period 19, covering weeks four and five, the T&As for 106 controllers were amended.

Primarily at issue, of course, were the amendments to documents recording each controller's attendance during the time from the beginning of the strike until Gunter's final removal letter was sent -- part of the so-called "evidence relied upon." Depending on the timing of Gunter's removal decision, the number of documents involved varied from controller to controller.

When Were Amendments Made?

With respect to the sign-in logs, we only know that the 223 amendments cited in the preceding section were made at some unknown time between oral hearings (mid-August) and the MSPB submission (mid-November).

For most T&As, we know the actual date of amendment. Whenever the Center's T&A clerk made an amendment, she kept a copy for herself and marked on that copy the date of the change. For those T&As for which we have dates, the number of amendments by months are as follows:

Month in Which Amended	No. Amendments for P.P. 17	P.P. 18	P.P. 19	Total
September	19	5	4	28
October	82	73	64	219
November	32	41	30	103

The T&As amended in September were mostly those of probationary employees (less than one-year government service) who were not entitled to the oral hearing or MSPB appeal process. Most of the T&As were amended in October in the Center's war room -- 219 of the 315. The 103 T&As amended in November were all dated in the first week since the Center was making an apparent "hurry up" effort to complete records and finish the second shipment to the Region.

For each controller, the date of the amended T&A was compared with the name and date shown on the memo depicting the second shipment (Exhibit 13). This comparison reveals that T&As were usually amended from one to five days before each controller's record was shipped to the Region. As the amendment process neared completion in late October and early November, this interval was reduced to the same day of shipment, or less than three days.

On the average, the Subcommittee found that each controller's T&As were amended 61 days after his oral hearings. Thus, the records shown to controllers at those hearings, and later cited as the basis for removal were being amended by FAA about two months after the hearings. Also, each controller's T&As and logs were amended an average of 42 days after his date of separation from FAA; thus the Chicago Center was amending the records of most controllers long after they had been fired.

What Types of T&A Amendments Were Made?

Subcommittee investigators reviewed a sample of 137 amended T&As to determine what types of changes were made. Following are the results:

AWOL to A/L

Twenty of the 137 amended T&As were changed from AWOL to A/L. Most of these amendments were necessary because the initial T&As showed controllers as AWOL from the first day of the strike (August 3); whereas, the President declared controllers AWOL on their first regularly scheduled shift after 11 a.m. on August 5. The T&As had to be amended for the first two or three days of the strike to change AWOL to A/L to be consistent with this policy.

AWOL to Working

Five controllers worked the mid-shift from midnight August 2 to 8 a.m. August 3; but they were shown as AWOL on the T&A, even though they had signed on and off on the log. This was discovered in the controllers' oral hearings, but the T&As were not amended to change the status of these controllers from AWOL to "working" until the amendment process leading to the second shipment.

Scheduled Overtime to AWOL

Thirty-nine of the 137 amended T&As involved changing a scheduled overtime day to AWOL. The Center's apparent reason for doing this was that, on a scheduled overtime day (SOT), a controller is supposed to first report to work and then be allowed to take the scheduled day off. Since the controllers did not report to work, the Center decided to declare them AWOL. This policy decision to change SOT to AWOL was apparently made sometime after the strike since it was not reflected in the initial T&As.

AWOL to NOP

The T&As of nine probationary employees (those with less than one-year government service) were amended to change AWOL to not on payroll (NOP). Essentially, NOP represented the same status for probationary employees as AWOL did for career employees.

Consistency of Shift with Watch Schedule

Almost one-half of the altered T&As (66 of 137) were amended to change the assigned shifts shown to make them consistent with the watch schedule. Apparently, this resulted when personnel misread the watch schedule and/or the logs when initially filling out the T&As. Many of these schedule inconsistencies were pointed out by controllers or their representatives at oral hearings, but still, they were not corrected prior to the first shipment of records.

Case Examples of Amended Records

Looking for clues to the consequences of the amendment process, the Subcommittee investigators reviewed the Chicago Center records as contained in the official MSPB files, now in Washington, D.C. This review concentrated on the attendance records of about 40 controllers on annual leave, but also briefly addressed almost 100 files of other Chicago Center controllers.

Five controller cases were found in which there were duplicate sets of attendance records. One set was comprised of watch schedules, T&As and logs in the "pre-amended" form (mistakes, inconsistencies) as contained in the first shipment to the Region (September 14 - October 1). The other set resulted from the second shipment (October 15 - November 6). Apparently, the Regional office somehow neglected to remove the first set when replacing it with the second.

The existence of the "before" and "after" sets of records enabled the Subcommittee to examine the problems and inconsistencies in the first set of records that led to amendments which corrected these problems. The following three cases of duplicate records illustrate this:

Controller X

In the first set of records, X's watch schedule shows that he was scheduled for the 1300 shift for Thursday, August 6; however, both the log and the T&A show that he was scheduled for the 1500 shift on that day -- an inconsistency. In the second set of records, both the log and the T&A were changed to 1300 to bring them into consistency with the watch schedule.

Also, in the first set of records, X's T&A shows AWOL for August 3 - 6, but his logs show AWOL for August 3 and 4, annual leave for August 5 and 6 and AWOL from August 7 forward. It was the Center's policy that once a controller was declared AWOL he would not be changed to another status at a later date. Thus, in the second set, X's annual leave on logs for August 5 and 6 was marked out and replaced with AWOL; bringing the T&A and logs into consistency with each other.

Controller Y

In the first set of records, Y's watch schedule shows the 1500 shift for Saturday, August 8; but his T&A shows the 0700 shift for that day. The log shift agrees with the watch schedule. In the second set, Y's T&A is amended to 1500 to bring it into consistency with the watch schedule and log.

The watch schedule shows that Y had approved leave for August 3-8, but the T&A and log show AWOL for the week (with the exception of A/L for the August 8 log). In the second set of records, the logs have been changed and the T&A amended to bring them into line with the Center's emerging annual leave policy -- declare controllers AWOL beginning the first regularly scheduled shift after 11 a.m., August 5. Y's first such shift was 0700, August 6, so he was first declared AWOL for this shift in his second set of records -- e.g., T&A and log were both amended in second set to show A/L for August 3-5 and AWOL beginning 0700 August 6. (The incorrect A/L status for the August 8 was changed to AWOL in the process.)

Controller Z

In the first set, Z's T&A shows a regular day off on August 4 but his watch schedule shows an 0700 shift. For August 6, Z's watch schedule shows that he is scheduled for the 2300 shift, but Z's name is not on the log for that shift. Both of these scheduling inconsistencies are rectified in the second set of records.

Also, in the first set of records, the watch schedule shows Z as being on annual leave for the week; logs show the same; however, the T&A shows AWOL for the week. The T&A is amended and the logs changed in the second set to be consistent with the policy of declaring a controller AWOL for the first regularly scheduled shift after 11 a.m., August 5.

Conclusion

It is apparent that amendments to records were made for two principal reasons: (1) to assure consistent application of policies on controller status -- when to first declare those on annual leave as being AWOL, how to handle scheduled overtime (show AWOL) and what status to use for probationary employees (NOP); and (2) to correct errors made in the initial T&As and logs -- wrong work shifts, showing working controllers as AWOL, leaving names and status off logs and so forth.

Many of these record situations got very complex and often T&As were amended for multiple reasons. It took a large-scale, organized effort to straighten out the records.

The final result of this amendment process was a large and internally consistent set of attendance records that had been made so flawless that the FAA could point to these records as the only evidence needed to justify the firing of Chicago Center controllers. However, these documents were very different from the records Gunter relied upon to dismiss controllers, and far different from the records the controllers examined during their oral hearings. Very few of the changes were dated or initialled by those who made them.

OTHER ISSUES

In reviewing subpoenaed records, Subcommittee investigators noticed that on February 18, 1983, Robert L. Miller and several other Center employees had amended their own time and attendance sheets to claim additional hours worked during the beginning of the strike. The amended time and attendance sheets were certified by John Bacon, who was then Chief of the Chicago Center.

In Miller's case, 204 hours of compensatory time were claimed for the first five weeks of the strike. During the first five days of the strike, Miller recorded working 93 out of a possible 120 hours. This is an average of 18.6 hours per day, which, if meal breaks are included, totals about 20 hours per day for five straight days.

During the Subcommittee's hearing, Miller was asked why he claimed additional compensatory time some 18 months after the fact. Miller responded by stating that he discovered in November 1982, at the time of the initial MSPB hearings, that he was entitled to be paid compensatory time for any time he worked in addition to his regular scheduled duties. However, Miller acknowledged that Bacon, who was not at the Chicago Center during the beginning of the strike, did not ask him for any documentation which would have verified hours worked.

The Subcommittee also found front door logs for several dates in August which showed signatures and times of arriving personnel. For Miller, the times on these logs did not match the times included on his amended time sheets. When Chairman Oberstar asked Miller about this, the Subcommittee received the following answer:

Mr. Oberstar:	We do have a log that showed you signing in at the front door at 6:56 a.m., for Monday, August 3, and have an original T&A for Monday, August 3, that shows you listed as working at 7 a.m., it was amended to show that you started work at midnight, but a front-door log shows a sign-in at 6:56.
Mr. Miller:	Okay. The front-door log was placed there for people entering and leaving. I believe I was at work at midnight that night, and I had gone home to get a clean shirt and came back in the morning around 7. I was, I believe, gone for 15 or 20 minutes.

[*Hearings* -- March 11, 1987, p. 158]

Regardless of the plausibility of Miller's explanation, the Subcommittee is surprised at his seeming ability to recall such an insignificant detail, but inability to remember with such specificity other occurrences of much more consequence such as the chain of events leading up to, and the person responsible for ordering, another review of 400+ adverse action files in the war room during the fall of 1981.

The Perjury Complaint

An unexpected finding in the boxes of subpoenaed materials was a letter sent from Phillip Wood, a lawyer for some of the fired controllers, to Linda Wawzenski, an assistant U.S. Attorney for the Northern District of Illinois.

In his lengthy letter, Wood cites examples where he believes FAA officials (mainly George Gunter) perjured themselves in testimony before the MSPB (Exhibit 20). To substantiate his claim, Wood included several documents. He stated that the FAA was not aware of the fact that he possessed some of the documents, and that he did not want FAA advised.

Nonetheless, Wood's perjury complaint was found among the various other FAA records that the Subcommittee subpoenaed from the Chicago Center. And according to the cover letter found with the complaint, Wawzenski sent the perjury materials to the Agency just weeks before Wood's confrontation with the FAA at the remand hearing (Exhibit 21).

The fact that Wood's complaint was sent to the FAA concerned the Subcommittee. Could it be that the U.S. Attorney's office assisted FAA's efforts in the remand hearing by supplying the Agency with a copy of the adversary's "playbook"?

Subcommittee Chairman Oberstar met with representatives of the Justice Department's Office of Professional Responsibility and asked for an investigation into the conduct of the U.S. Attorney's office.

On July 6, 1987, the Subcommittee received the results from that investigation (Exhibit 22). Although Chairman Oberstar thought the investigation was conducted in a thorough and professional manner, he had reservations about the conclusions that were drawn. He expressed the Subcommittee's reservations in a letter dated October 2, 1987 (Exhibit 23). The Subcommittee received a response to Chairman Oberstar's letter several weeks later (Exhibit 24).

The attached letters will speak for themselves in regard to the Subcommittee's concerns in this matter and the conduct of the U.S. Attorney's office.

EXHIBITS

Exhibit Number	Title of Exhibit
1.	Personnel in Chicago Center facility, August 6, 1981
2.	GENOT on responsibilities of oral reply officials
3.	Code of Federal Regulations, Title 5, Sec. 2, reference: designation of oral hearings officials
4.	Oral hearings summary, reference: authority of hearings official
5.	Oral presentation work sheet
6.	Brief to permit testimony of Robert L. Miller
7.	Affidavit of Robert L. Miller, February 29, 1984
8.	Affidavit of Robert L. Miller, August 13, 1986
9.	Affidavit of Henry French, August 14, 1986
10.	Oral hearings summary and personnel logs for controller Peter Sober
11.	Memo depicting "Completed Files Sent to Regional Office," September 14 - October 1, 1981
12.	Transmittal letter for adverse action files from Richard Shewfelt, FAA Great Lakes Region to Merit Systems Protection Board
13.	Memo depicting "Packages to Regional Office," October 16 - November 5, 1981

14. Regional office meeting on annual leave cases of Chicago Center, December 7, 1981, with Wesley Walker, Richard Shewfelt, George Gunter and Robert L. Miller.

15. Undated statement for record, cancellation of annual leave for Jerome Iwanski by Wayne Winslow, accepted by MSPB as addition to appeal file on 11/4/82

16. Dated memos for record of December 1981 regarding cancellation of annual leave by supervisors

17. Front and back of personnel log and example of log as originally submitted to the MSPB

18. Same personnel log as identified in the second part of Exhibit 17, but with the bleed-through of the Robert L. Miller signature stamp

19. Original "memos for the record" regarding Iwanski

20. Phillip Wood's perjury complaint submitted to Linda Wawzenski of the U.S. Attorney's office

21. Linda Wawzenski's letter forwarding the perjury complaint to FAA

22. Results of Justice Department investigation

23. Chairman Oberstar's response to Justice Department findings

24. Justice Department's final response

Geo	Per your request		Totals
E/T	7 T/S	4 controllers	ET 11
E/W	7 T/S	2 controllers	EW 9
E/H	7 T/S	10 controllers	EH 17
W/H	7 T/S	12 controllers	WH 19
W/W	7 T/S	10 controllers	WW 17
W/T	6 T/S	5 controllers	WT 11
N/W	6 T/S	4 controllers	NW 10
A-SIDE	CURRENTLY BEING USED		14

These numbers reflect the personnel on board since the strike began. a breakdown is on the back.

— EXHIBIT 1 —

BREAKDOWN BY AREA

E/T

Cimino
-Lindsay
-Kuchelbeck
-Halle
-Plesch
-Zeal
-Bartels
-Lynch
Brown
Pope - EPDS
Ford - 3 Manuals)

E/W

Petrie
Kok
Klein
Burns
Seymour
Kolasek
Claybourn
Dated
Bishop - F/C

E/H

Salmis
Winslow
Fisher
Carter
Brandy
Gould
Benson
Angelone
Kuelling
McLaren
F. Boyle - EPDS
Brandt
VanAndel
Roecker - EPDS
Stemmer
Fritsch
Panka

W/H

Graf
Thielman
Mingea
Wolf
Gilliam
Ginley
Dean
Lynch - EPDS
Kaysen
Miller
Morrissey
Quinn
Mannion
M. Boyle EPDS
Riely
Shanks - EPDS
Byrd
Ross
Bohm

W/T

Hansen
Mitchell
Harper
Ott
Balajenta - EPDS
Narino - EPDS
Sternad
Riddle
Schaaf
Duvernine
Bremmer - EPDS

N/W

Miller
Glover
Raap
Kwolek
Adair
Mayes - EPDS
Albrecht
Jorgensen
Woolcott

W/W

Bachman
Sanborn
Spinden
Niemeyer
Freund
Soup
Martinson
Feakins
Magnuson
Dahl
Johnson - S/S
Brown
Perrin
Snell - EPDS
Capper
McBroom
Kang

A-SIDE

Grissom
Daniels
Penney
Denise Davis - Co-op
Mary Mayes Sec
Fantek - EPDS
Fitting - DSS
Elliott - DSS
Gordon - DSS
- EPDS
Murray - DSS
McMahon - EPDS
Trudo - DSS
Quartinis
Chatfield - Pending

— EXHIBIT 1 (cont.) —

1 Guidelines for ~~Line~~ processing removals

TELEGRAPHIC MESSAGE

NAME OF AGENCY FEDERAL AVIATION ADMINISTRATION OFFICE OF LABOR RELATIONS WASHINGTON, D.C. 20591	PRECEDENCE ACTION: PRIORITY INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☒ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME E. V. CURRAN , ALR-1	PHONE NUMBER 426-3248	
THIS SPACE FOR USE OF COMMUNICATION UNIT		

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

1 GENOT RWA 1/147 SVCB

ALRGNS 1/10/16/500 CHIEFS OF ALATFO

THIS MESSAGE CONTAINS THE FOLLOWING GUIDANCE ON THE PROCESSING OF REMOVAL ACTIONS INVOLVING STRIKING CONTROLLERS: 1) DESIGNATION OF REPRESENTATIVE TO HEAR ORAL RESPONSE; 2) REACTION TO REQUESTS FOR EXTENSION OF 7-DAY PROPOSED NOTICE; 3) REMINDER TO DECIDING OFFICIALS; AND 4) EXAMPLE LETTER OF DECISION TO REMOVE.

1) DESIGNATION OF REPRESENTATIVE TO HEAR ORAL RESPONSE

UNDER PERTINENT REGULATIONS DECIDING OFFICIALS MAY MAKE A WRITTEN DESIGNATION OF ANOTHER MANAGEMENT REPRESENTATIVE TO HEAR AN ORAL REPLY. AS DESCRIBED IN PARAGRAPH 206b, Order 3770.2B, THE

2 REPRESENTATIVE MUST PREPARE A WRITTEN SUMMARY OF THE ORAL RESPONSE AND RECOMMEND WHAT THE DECISION ON THE PROPOSED ACTION SHOULD BE. FAA OFFICALS DESIGNATED TO HEAR REPLIES MUST HAVE SUFFICIENT JUDGEMENT AND EXPERIENCE TO PERFORM THIS FUNCTION. OFFICIALS NOT EMPLOYED

DATE TIME GROUP
11 AUG 81 1554Z

PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION
1	5	

STANDARD FORM 14
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-35.306

14-102

U.S.GPO:1979-0-281-107/4249

EXHIBIT 2

TELEGRAPHIC MESSAGE

NAME OF AGENCY

PRECEDENCE
ACTION:
INFO:

SECURITY CLASSIFICATION

ACCOUNTING CLASSIFICATION

DATE PREPARED

TYPE OF MESSAGE
☐ SINGLE
☐ BOOK
☐ MULTIPLE-ADDRESS

FOR INFORMATION CALL
NAME
PHONE NUMBER

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

What? about Ext Requests

BY FAA SHOULD NOT BE USED FOR THIS PURPOSE.

2) REACTION TO REQUESTS FOR EXTENSION OF 7-DAY PROPOSED NOTICE

AS THE REMOVALS ARE BEING PROCESSED UNDER THE ACCELERATED PROCEDURES OF THE CRIME PROVISION, ROUTINE REQUESTS FOR EXTENSIONS OF THE 7-DAY NOTICE PERIOD ARE NOT TO BE GRANTED. PROTESTS THAT THE CRIME PROVISION IS NOT APPROPRIATE OR THAT ADDITIONAL MATERIAL IS BEING 3 REQUESTED BY THE EMPLOYEE ARE NOT APPROPRIATE REASONS FOR GRANTING EXTRA TIME. WRITTEN DENIALS OF REQUESTS FOR EXTENTIONS SHOULD BE ISSUED PROMPTLY TO EMPLOYEES. DENIALS SHOULD ACKNOWLEDGE RECEIPT OF THE REQUEST FOR EXTENSION, STATE THAT UNDER THE CIRCUMSTANCES AN EXTENSION IS NOT APPROPRIATE AND RESTATE THE DATE BY WHICH THE ORAL AND/OR WRITTEN RESPONSE MUST BE RECEIVED. THEY SHOULD ALSO ADVISE EMPLOYEE TO IMMEDIATELY CONTACT THE OFFICIAL DESIGNATED TO HEAR THE ORAL REPLY, TO MAKE ARRANGEMENTS TO SCHEDULE THE ORAL REPLY IN THE NOTICE TIME THAT IS REMAINING. IN EXCEPTIONAL CASES, EXTENSIONS TO 4 THE NOTICE PERIOD MAY BE GRANTED IF THE EMPLOYEE CAN DEMONSTRATE THAT HE IS LEGITIMATELY 5 PREVENTED FROM MAKING A RESPONSE. SUCH

SECURITY CLASSIFICATION

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2	5

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EXHIBIT 2 (cont.)

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

EXTENSIONS MUST BE SUPPORTED BY PHYSICAN'S STATEMENTS, HOSPITAL RECORDS, ETC. ANY EXTENSIONS TO BE GRANTED MUST BE COORDINATED WITH THE REGIONAL LR BRANCH.

3) REMINDER TO DECIDING OFFICIALS

DECIDING OFFICIALS ARE REMINDED THAT IT IS APPROPRIATE AND PROPER TO CONSULT WITH REPRESENTATIVES OF LR, GC AND/OR AIR TRAFFIC PRIOR TO RENDERING A DECISION ON A PROPOSED REMOVAL.

4) EXAMPLE LETTER OF DECISION TO REMOVE

DATE:

NAME OF EMPLOYEE:

ADDRESS:

DEAR (NAME):

MY LETTER OF (DATE) INFORMED YOU OF A PROPOSAL TO REMOVE YOU FROM YOUR POSITION OF (TITLE, SERIES, GRADE AND SALARY, FACILITY AND

PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION
3	5	

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☆ U.S. GPO: [illegible]

— EXHIBIT 2 (cont.) —

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

LOCATION). I HAVE GIVEN FULL CONSIDERATION TO YOUR WRITTEN SUBMISSION OF (DATE) AND YOUR ORAL REPLY OF (DATE). (MODIFY AS REQUIRED.) I FIND THAT BOTH OF THE REASONS IN THE LETTER OF PROPOSED REMOVAL OF (DATE) ARE FULLY SUPPORTED BY THE EVIDENCE AND WARRANT YOUR REMOVAL TO PROMOTE THE EFFICIENCY OF THE SERVICE. IT IS MY DECISION, THEREFORE, THAT YOU BE REMOVED EFFECTIVE (DATE).

6

YOU HAVE THE RIGHT TO APPEAL THIS REMOVAL TO THE MERIT SYSTEMS PROTECTION BOARD, OR TO GRIEVE THE ACTION UNDER THE PATCO/FAA AGREEMENT, BUT NOT TO DO BOTH. IF YOU ELECT TO APPEAL THIS ACTION, YOU MUST SUBMIT AN APPEAL TO THE CHIEF APPEALS OFFICER, MERIT SYSTEMS PROTECTION BOARD (ADDRESS OF LOCAL MSPB OFFICE) DURING THE PERIOD BEGINNING WITH THE DAY AFTER THE EFFECTIVE DATE OF THE REMOVAL UNTIL NOT LATER THAN 20 CALENDAR DAYS OF THE EFFECTIVE DATE. ENCLOSED IS A FORM WHICH YOU MAY USE IN SUBMITTING AN APPEAL AND A COPY OF MSPB REGULATIONS.

7

IF ON THE OTHER HAND, YOU BELIEVE THIS ACTION VIOLATES ARTICLE 69 AND YOU CHOOSE TO FILE A GRIEVANCE, YOU MUST SUBMIT A WRITTEN GRIEVANCE TO (NAME AND ADDRESS OF FACILITY CHIEF) NO LATER

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☆U.S.GPO:1979-0-281-187/4049

— EXHIBIT 2 (cont.) —

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION INFO	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

THAN 15 CALENDAR DAYS AFTER THE EFFECTIVE DATE OF THE REMOVAL.

IN THIS CONNECTION YOU SHOULD KNOW THAT THE FAA HAS FILED AN UNFAIR LABOR PRACTICE (ULP) CHARGE AGAINST PATCO FOR ITS ROLE IN THE STRIKE AND IS SEEKING TO HAVE THE UNION DECERTIFIED. THE CASE IS NOW BEING PROCESSED BY THE AUTHORITY AND A DETERMINATION THAT PATCO COMMITTED A ULP COULD IMPACT ON THE PROCESSING OF GRIEVANCES UNDER THE PATCO/FAA AGREEMENT. IF THE UNION IS DECERTIFIED AND THE AGREEMENT TERMINATED, THIS AVENUE OF APPEAL MAY NOT BE AVAILABLE TO YOU. IF YOU ELECT TO FILE A GRIEVANCE, IT MUST BE FILED IN ACCORDANCE WITH ARTICLE 7, SECTION 8, OF THE AGREEMENT AND SUBMITTED ON FAA FORM 3770.2. THE GRIEVANCE WILL BE PROCESSED BEGINNING WITH STEP 2 OF THE GRIEVANCE PROCEDURE IN THE AGREEMENT.

UPON YOUR REQUEST, (NAME, TITLE, LOCATION) WILL GIVE YOU FURTHER INFORMATION ON APPEALS PROCEDURES TO THE MERIT SYSTEMS PROTECTION BOARD.

(SIGNED)____________________
AUTHORIZED DECIDING OFFICIAL
TITLE
ORGANIZATION

Curran
CURRAN, ALR-1

PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION
5	5	

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U.S.GPO:[illegible]

EXHIBIT 2 (cont.)

e procedures provided in 5 U.S.C.
13(b).

b) *Notice of proposed action.* (1)
ıe notice of proposal shall inform
e employee of his or her right to
view the material which is relied on
support the reasons for action given
the notice. The agency may not use
aterial which cannot be disclosed to
e employee or his or her representa-
/e or designated physician under
297.108(c)(1) of Part 297 of this title
support the reasons in the notice.

(2) When some but not all employees
a given competitive level are being
ırloughed, the notice of proposal
ıall state the basis for selecting a
articular employee for furlough, as
ell as the reasons for the furlough.

(3) Under ordinary circumstances,
n employee whose removal has been
roposed shall remain in a duty status
ı his regular position during the ad-
ance notice period. In those rare cir-
ımstances where the agency deter-
ıines that the employee's continued
resence in the work place during the
otice period may pose a threat to the
mployee or others, result in loss of or
amage to Government property, or
therwise jeopardize legitimate Gov-
rnment interests, the agency shall
onsider whether any of the following
lternatives is feasible:

(i) Assigning the employee to duties
where he or she is no longer a threat
o safety, the agency mission, or to
Government property;

(ii) Placing the employee on leave
with his or her consent;

(iii) Placing the employee on invol-
ıntary sick or other leave when the
agency has medical documentation
lemonstrating physical or mental in-
apacitation;

(iv) Carrying the employee on appro-
priate leave (annual, sick, leave with-
out pay, or absence without leave) if
ıe or she is absent for reasons not
originating with the agency; or

(v) Curtailing the notice period
when the agency can invoke the provi-
sions of § 752.404(d)(1) (the "crime
provision"). This provision may be in-
voked even in the absence of judicial
action if the agency has reasonable
cause to believe that the employee has
committed a crime for which a sen-
tence of imprisonment may be imposed. If none of these alternatives is available, the agency may place the employee in a paid, nonduty status during all or part of the advance notice period.

(c) *Employee's answer.* (1) The agency shall give the employee a reasonable amount of official time to review the material relied on to support its proposal and to prepare an answer and to secure affidavits, if he or she is otherwise in an active duty status.

(2) The agency shall designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides one in its regulations in accordance with paragraph (g) of this section. *

(d) *Exceptions.* (1) 5 U.S.C. 7513(b) authorizes an exception to the 30 days' advance written notice when the crime provision is invoked. The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the agency may place the employee in a nonduty status with pay for such time, not to exceed ten days, as is necessary to effect the action.

(2) The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(e) *Representation.* 5 U.S.C. 7513(b)(3) provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position; or an employee of the agency whose release from his or her official position would give rise to
unreasonable costs or whose
work assignments preclude his
release. 5 U.S.C. 7114(a)(5) a
terms of any applicable collect
gaining agreement govern repr
tion for employees in an exclus
gaining unit.

(f) *Agency decision.* In arrivin
written decision, the agency sh
sider only the reasons specified
notice of proposed action an
consider any answer of the em
and/or his or her representativ
to a designated official. The
shall deliver the notice of deci
the employee at or before the ti
action will be effective. The
shall tell the employee of his
appeal rights.

(g) *Hearing.* Under 5 U.S.C.
the agency may in its regulatio
vide a hearing in place of or i
tion to the opportunity for
and oral answer.

(5 U.S.C. 7513, 7514, 1302)

[45 FR 46778, July 11, 1980, as ame
48 FR 19349, Apr. 29, 1983; 48 FR
Oct. 6, 1983]

§ 752.405 Appeal and grievance rig

(a) *Appeal rights.* Under the
sions of 5 U.S.C. 7513(d), an em
against whom an action is taken
this subpart is entitled to ap
the Merit Systems Protection B

(b) *Grievance rights.* 5
7121(e)(1) requires an aggrieve
ployee to elect to appeal unde
subpart or, where applicable, to
grievance under the negotiated
ance procedure, but not both.

§ 752.406 Agency records.

The agency shall maintain co
the items specified in 5 U.S.C.
and shall furnish them upon
as required by that subsection.

Subpart E—Principal Statuto quirements for Taking Adver tions Under the Senior Exe Service

§ 752.501 Principal statutory ments.

This subpart sets forth for the
fit of the user the statutory r
ments of subchapter V of Chap

— EXHIBIT 3 —

Iwanski, Jerome — Name
East High — Area
8/21/81 - — Date
#206

Mark McBride — Name of employee representative
PATCO — Union/Attorney

John W. Wubbolding — Name of hearing official (FAA)

DIGEST:

The hearing officer opened the hearing by advising that the purpose of this hearing was to allow the employee the opportunity to explain why the proposed action should not be tak^n. At the request of th^ union representative Mr. Iwanski read the following statement for the record: "Because I have been accused of striking, I stand mute on the specifics of the allegations against me. However, I would like to take this opportunity to ask some questions about the facts relied upon by the agency in bringing this action. Nothing I say should be regarded as a waiver of my right to be silent." They were requested by the hearing officer to ask questions about the facts relied upon by the agency in bringing this action. At this point the union representative requested that a 30 day extension and 16 hours of official business be granted to prepare his case. He then requested that th^ attached list of material be provided. He was advised to request the material from the Great Lakes Regional Office under the Freedom of Information Act. He was also advised that item number 2 of his list copies of all materials relied upon to support the proposed removal action were available here for his review. This consisted of th^ facility schedule for the week of August 2, the facility personnel logs from August 3 thru August 8 and Title 5, paragraphs 7311 on loyality and strikin

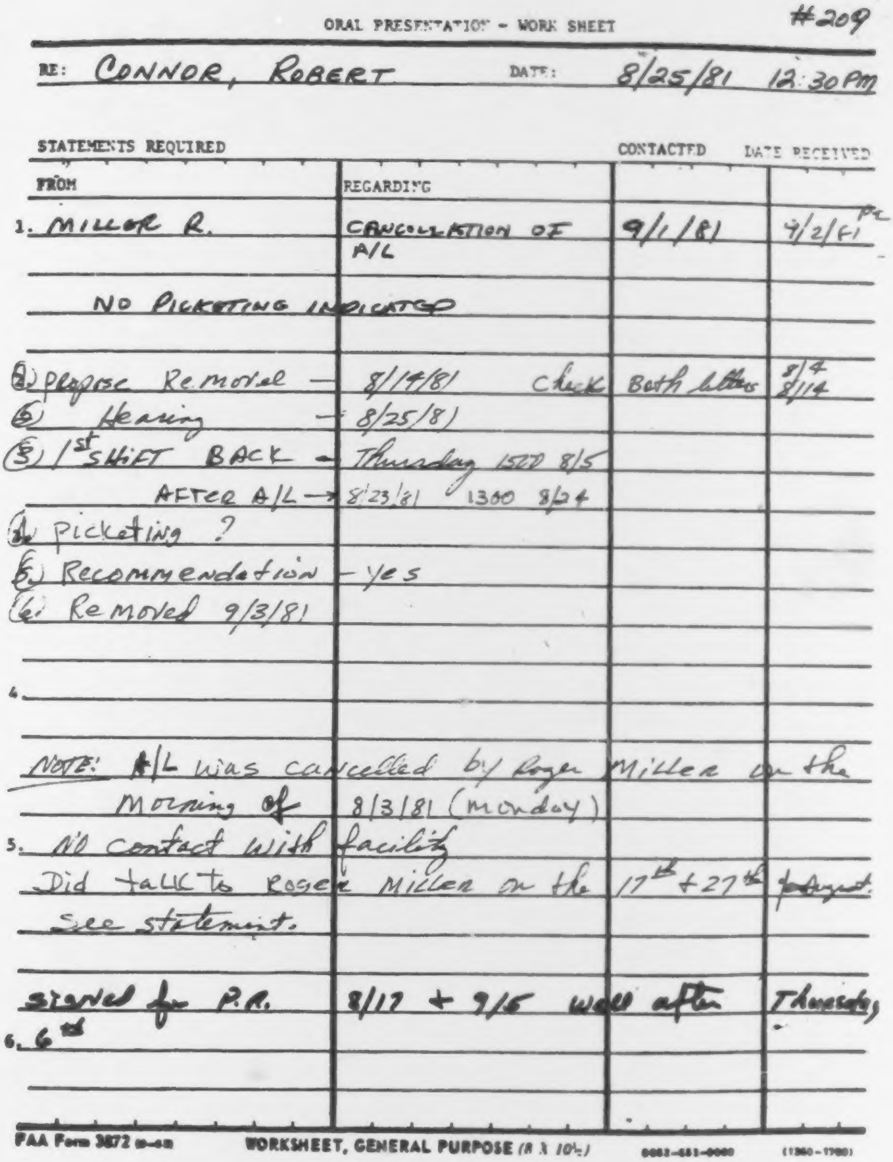
Th^ union representative reiterated his request for a 30 day extension and 16 hours of official business, but was denied by the hearing official, predicated on the l^tter from Mr. Gunter to Mr. Schmitt. He then said he was specificly requesting for Mr. Iwanski and will continue the hearing under protest. Upon inquiry by the union representative I advised that I have no authority in the final decision. My responsibility was to prepare a summary with a recommendation and submitted it to the deciding official.

Mr. Iwanski and th^ union representative then review ed the supporting documents and the union representative made the following statements: Mr. Iwanski was charged with being absent without leave starting August 6 when he was actually on approved annual leave on August 6. The master schedule shows him on annnual l^ave for the full week thru August 8. He received his letter of proposed removal on August 10 prior to the time that he was to report for duty on the on 1500 shift. After he received his letter he did not report because the union office had recieved information from other persons who under similar ~~SUMMARY:~~ circumstances called the facility and were told not to report to work. Therefore Mr. Iwanski should not be fired because the log and schedule show him to be on annual leave. The Union R^presentative further stated that in his letter of proposed removal it stated "You were aware of a strike." I don't think Mr. Gunter can say that Mr. Iwanski was aware of the strike. The Union Representative said that they were requesting a copy of this summary and upon your inquiry he stated that he did not feel that they had been afforded the opportunity to explain why the proposed action should not be taken, because of the lack of material and inadequate time to prepare the case.

ATTACHED: Supporting employee evidence

RECOMMENDATION: Further Facility discussion YES X NO ____

EXHIBIT 4



ORAL PRESENTATION - WORK SHEET #209

RE: CONNOR, ROBERT DATE: 8/25/81 12:30PM

STATEMENTS REQUIRED

FROM	REGARDING	CONTACTED	DATE RECEIVED
1. MILLER R.	CANCELLATION OF A/L	9/1/81	9/2/81 PC
NO PICKETING INDICATED			
② Propose Removal —	8/14/81 check	Both letters	8/4 8/14
④ Hearing —	8/25/81		
③ 1st SHIFT BACK —	Thursday 1500 8/5		
AFTER A/L →	8/23/81 1300 8/24		
① picketing ?			
⑤ Recommendation —	yes		
⑥ Removed 9/3/81			
4.			
NOTE: A/L was cancelled by Roger Miller on the Morning of 8/3/81 (monday)			
5. No contact with facility			
Did talk to Roger Miller on the 17th + 27th ~~of August~~.			
See statement.			
signed for P.R.	8/17 + 9/15	well after	Thursday
6. 6th			

FAA Form 3872 (8-63) WORKSHEET, GENERAL PURPOSE (8 X 10½) 0052-451-0000 (1960-1700)

EXHIBIT 5

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

CHARLES F. BEHENSKY, JR., et al.,
appellant

v.

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION,
agency.

BRIEF IN SUPPORT OF MOTION TO PERMIT TESTIMONY OF ROBERT MILLER

The Federal Aviation Administration submits the following in support of its request to allow the testimony of Robert Miller.

The attached Affidavit of Mr. Miller supports the position that his testimony is necessary in order to clarify the recordkeeping process. In its Order of February 8, 1984, the Board strongly suggests that ". . ., the Presiding Official may wish to consider the need for eyewitness testimony explaining the process by which the records were created". (Order, page 7) The agency submits that Mr. Miller can provide that explanation.

At the hearing, Mr. Miller was prohibited from testifying due to his presence in the courtroom during previous testimony following an objection by the appellants that the Presiding Official had ordered witnesses to be sequestered. The agency submits that Mr. Miller should now be permitted to testify. The purpose of sequestion is to prevent the possibility of a witness shaping his testimony to match that given by other witnesses. U.S. v. Leggett, [illegible] F.2d 613, 1964.

That Situation does not exist in this case for several reasons. First, the only testimony given with respect to the records was that given by Mr. Gunter. Mr. Gunter, as the Board pointed out, had no firsthand knowledge how the records were kept during the strike. Mr. Miller, on the other hand, does have first hand knowledge. His Affidavit demonstrates that he was responsible for that process. Therefore, his testimony would be based on his actions with respect to these records. It would not be influenced by the testimony of Mr. Gunter, who could only speculate about the actions taken. It is not error for the court to allow the testimony of a person who was not excluded when that person is testifying from his own experience. United States v. Johnston, 345 F2d 457, 1965.

EXHIBIT 6

In addition, Rule 615 of the Federal Rules of Evidence, 28 U.S.C. 615, contains an exception to the provision for exclusion of witnesses. Under Rule 615(3) an employee of a party which is not a natural person designated as its representative by its attorney, is not subject to exclusion. Mr. Miller was designated by the agency as its technical representative. The rules do not authorize the exclusion from the courtroom of a government officer or employee who has been designated as its representative. United States v. Williams, 604 F.2d 1102, 1979. This provision is most often applied in the case of investigative agents, where the purpose is to permit the government to have the benefit of the investigator's technical assistance due to his familiarity with the case. U.S. v. Woody, 588 F.2d 1212, 1978. The agency submits that this situation is analogous. Here, Mr. Miller was responsible for the recordkeeping as well as other functions at the facility during the strike and his technical expertise was necessary to the presentation of the government's case. This is particularly so in light of the numerous cases involved in this consolidation.

The exclusion of witnesses also involves the issue of credibility, as it relates to the reliability of a witness's testimony. Here, the opportunity exists to cross examine Mr. Miller as to the foundation for his testimony. They would have an opportunity to attack his credibility in this matter. The Presiding Offical may at the same time observe his demeanor. This way, well over a year has lapsed since the initial hearing in this matter. Given the length of time between the testimony for which Mr. Miller was present and any testimony he might give, the likelihood of unreliability based on that other testimony is remote. It is unlikely that if Mr. Millar testifies, his testimony would be influenced by any testimony given in November, 1982.

Finally, the Board's concern on remand was that the record be clear as to the accuracy of agency records. The goal in this matter is to gather all the facts necessary to reach a conclusion at to that accuracy. The purpose of Mr. Miller's testimony is to present the facts. The facts of which he has firsthand knowledge. Therefore, in order to make the fact finding process complete it is critical that his testimony be taken.

At the time of the hearing, the agency attempted to secure a witness other than Mr. Miller who could testify on this issue. It was unsuccessful because no other person had the firsthand knowledge of the entire recordkeeping process. This issue requires that knowledge because of the complexity of the issue involved. The agency has, as it did at the hearing, diligently searched for others who could testify on this issue. Such a person cannot be found because, although others were involved in various steps of the recordkeeping process, no one other than Mr. Miller has knowledge of the entire process or can explain how the process was conducted.

In summary, the agency submits that the testimony of Robert Miller is necessary to make the record in this matter complete, that he is exempt from the rule on exclusion of witnesses due to the length of time which has intervened, his position as the agency's technical advisor and the nature of his testimony which will be based on his own factual experience. The appellants will not be prejudiced by his testimony as they may cross examine Mr. Miller as to the reliability of his testimony and may present their own evidence on the issue.

THEREFORE, in order to clarify the record as ordered by the Board, the agency submits that Mr. Miller's testimony be permitted.

Eileen Weikel Johnson
Eileen Weikel Johnson
Designated Agency Representative

FEB 29 1984
Date

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

CHARLES F. LEHENSKY, JR., et al.,
appellant

v.

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION,
agency.

DOCKET NUMBER
CH075281F0979

AFFIDAVIT

I, Robert Miller, am employed by the Federal Aviation Administration as Area Manager at the Chicago Air Route Traffic Control Center (ARTCC), Aurora, Illinois. If permitted to testify in this matter on the issue of recordkeeping at the Chicago Center during the strike by the air traffic controllers union (PATCO), which commenced on August 3, 1981, I would testify as follows:

I. As of August 3, 1981, I was employed at the Chicago Center as the Evaluations Officer.

II. Among the duties assigned to me at that time, in my capacity as the Evaluations Officer, was the responsibility for the formulation and implementation of the Chicago Center Strike Contingency Plan.

III. In addition to the above responsibility, during the period August 3 to September 20, 1981, in the absence of the Chief/ or the Deputy Chief, I acted as Acting Chief of the Chicago Center. As such, I had responsibility for the operation of the entire facility.

IV. During the period commencing August 3, 1981, and continuing for the duration of the strike, I instituted changes to the method of keeping certain official facility records. These changes were necessitated by the need to have the supervisory personnel normally charged with the recordkeeping actually control traffic during the strike.

V. I instituted changes in the method used to make and preserve facility sign-in logs, watch schedules, and time and attendance records.

VI. These changes were done at my direction and were carried out either by myself or by persons delegated by me to perform them.

— EXHIBIT 7 —

VII. I will explain changes made, as well as the methods used to carryout those changes.

VIII. I will be able to reconcile apparent inconsistencies which resulted from the change in the manner in which records were kept.

IX. Although the method of recordkeeping changed, the records which are part of the agency's file in each of these cases accurately reflect the dates and times each individual was required to be at work and the dates and times when they were AWOL and on strike.

X. I am the only person who has first hand knowledge of the entire recordkeeping system and the changes made thereto. Other individuals performed only limited tasks and do not have direct knowledge of the overall system of recordkeeping during the strike.

Robert Miller
Robert Miller

SUBSCRIBED AND SWORN TO before me,

this 29th day of February, 1984.

Rosemary K. Hall
Notary Public

My commission expires on My Commission Expires April 26, 1987.

EXHIBIT 7 (cont.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PETER T. NYQUIST,)
)
Plaintiff,)
)
v.) No. 86 C 2352
)
ROBERT L. MILLER, ET AL.,) Judge Ann C. Williams
)
Defendant.)

AFFIDAVIT OF ROBERT L. MILLER

The undersigned, being first duly sworn, deposes and says:

1. I am employed by the Federal Aviation Administration as an Area Manager at the Chicago Air Route Traffic Control Center.

2. During the period of time alleged in the Complaint, I was employed by the FAA in a supervisory position at the Chicago Center.

3. During the period of time alleged in the Complaint, I was performing duties in my capacity as a supervisor and duties assigned to me by George Gunter, the Chief of the Chicago Center.

— EXHIBIT 8 —

4. During the period of time alleged in the Complaint, my involvement with the recordkeeping process regarding documents related to the adverse actions against controllers at the Center was at the direction and order of the Chief, and was in accordance with his instructions.

Robert L. Miller

Robert L. Miller

Subscribed and sworn to before me, this
13th day of August, 1986.

Rosemary K. Hall

Notary Public
My Commission Expires April 26, 1987

EXHIBIT 8 (cont.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PETER T. NYQUIST, Plaintiff,	)	
v.	)	No. 86 C 2352
ROBERT L. MILLER, ET AL., Defendant.	)	Judge Ann C. Williams

AFFIDAVIT OF HENRY D. FRENCH

The undersigned, being first duly sworn, deposes and says upon knowledge, information and belief:

1. I am employed by the Federal Aviation Administration as the Assistant Manager for Automation for the Chicago Air Route Traffic Control Center.

2. At the time of the controller strike in 1981, I was the Deputy Chief of the Chicago Center.

3. At the time of the controller strike, Robert L. Miller was the Evaluations Officer, a supervisory position, at the Chicago Center.

EXHIBIT 9

4. Robert L. Miller was at all times acting within the scope of his employment during the period of the strike and during the recordkeeping process involving the documents for the controllers who were fired.

5. I was present when the Chief of the Chicago Center, George Gunter, instructed Mr. Miller to work with the records relating to the controllers who were fired during the strike.

6. Mr. Miller's involvement with the recordkeeping process regarding the documents related to the adverse actions against the controllers was at the direction and pursuant to the instructions of the Facility Chief, Mr. Gunter.

Henry D. French

Henry D. French

Subscribed and sworn to before me, this
14th day of August, 1986.

Rosemary K. Hall

Notary Public

My Commission Expires April 26, 1987

EXHIBIT 9 (cont.)

SOBER, PETER J. — Flow Controller — 8/31/81 8:30 AM

Name — Area — Date

None — None

Name of employee representative — Union/Attorney

#32

LeRoy R. McCarthy

LeRoy R. McCarthy

Name of hearing official (FAA)

DIGEST:

The hearing convened at 0830, August 31, 1981, at the Hilton Inn, Aurora, Illinois. I expla to Mr. Sober that the purpose of the hearing was to afford him the opportunity to explain wh the proposed action should not be taken. He stated he understood. I also explained that he had the right to have a representative if he wanted to. He stated he did not want one.

Mr. Sober gave me a letter addressed to Mr. Gunter (attached) that he wanted to be included in the report. He explained that Mr. Beeson, Assistant Chief, approved his Annual Leave fro July 27, 1981 to August 17, 1981 and he was out of town during that period. While on leave he made no contact with anyone from the Chicago ARTCC nor was he contacted by anyone, neithe by telephone, letter or telegram. When asked if he was aware of the strike and President Reagan's amnesty he stated he eventually found out about it, after the amnesty ended, but di feel it applied to him because he was on approved Annual Leave. He was out of town with his wife (attached are receipts on lodgings and meals during his Annual Leave signed by Mr. Sobe or his wife Janis).

He stated neither Mr. Beeson nor Mr. White (his immediate supervisor) told him of any condit on which his leave was approved. As far as he was concerned he was on approved Annual Leave for the entire period. On August 16, 1981, he contacted Mr. Edward Froelich at the ARTCC ab when to return to work and was told that he could not return because of his failure to retur work previously.

The material on which the notice of proposed removal is based was reviewed, i.e., Facility Area Watch Schedule, Facility Sign-on Log (FAA Form 7230-4) and U. S. Code, Title 5, Section 1918 and 7311. Mr. Sober noted that the Watch Schedule shows him on Annual Leave. He point out that his name does not appear on any of the Facility Sign-on logs from August 2-8, 1981.

Mr. Sober stated he was ready and able to return to work at anytime.

SUMMARY: The conditions under which Mr. Sober's Annual Leave was approved should be reviewe to determine the validity of his statements.

ATTACHED: Supporting employee evidence
Attachments

RECOMMENDATION: Further Facility discussion — YES X — NO ____

EXHIBIT 10

DATE AUG 07 1981

PERSONNEL LOG

SHIFT 0.700—1500

SIGNATURE	INITIALS	ON	OFF	DUTIES	HOURS ON DUTY	HOUR ON LEAVE
BEESON	BB	0630	1500	A/C		
WHITE White	DW	0645	1600	A/C	8	
FROELICH	EF	1000	1745	Admin. A/C	(8)	
PETERSON	AX	1330	1630		3	O/T
TUSZL						AWOL
WALTER Walter	GW	0545	1545	F/C	8 +	2OT
BADAMI				Asst. F/C		AWOL
LASECKI	EL	0830	1830		10	
				W/C		
				Asst. W/C		
BISHOP	DP	0645	1645	A/B Row	8/2OT	
DETAMBLE	RD	0500	1500	C/D Row	10	
Tucker Tucker	LS	0545	1545	Currency	8+2 O/T	
				Currency		
POPE	JG	0700	1700	EPDS - E/T ~~[illegible]~~		
FURTEK	FK	0557	1557	EPDS - E/T		
MURRAY Murray		0700	1600	EPDS - W/W		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		

— EXHIBIT 10 (cont.) —

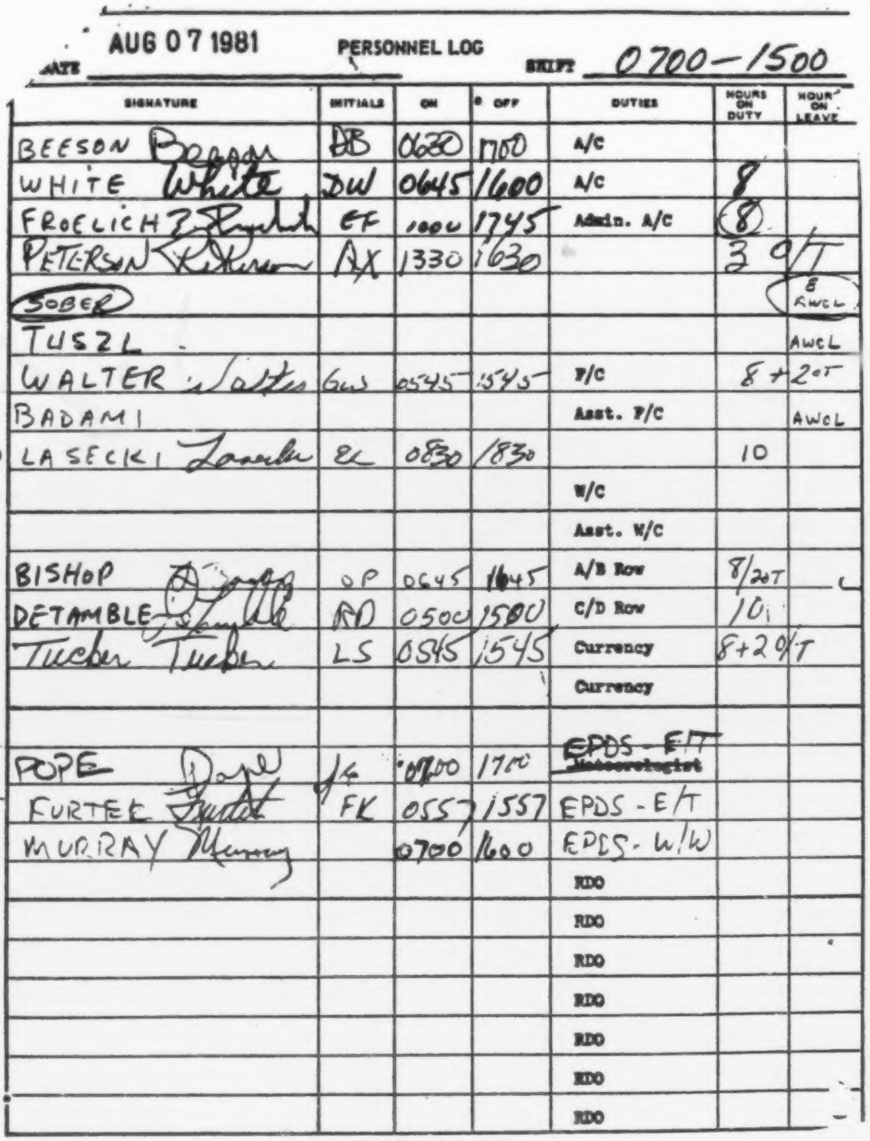
PERSONNEL LOG

DATE AUG 0 7 1981

SHIFT 0700-1500

SIGNATURE	INITIALS	ON	OFF	DUTIES	HOURS ON DUTY	HOUR ON LEAVE
BEESON Beeson	DB	0630	1700	A/C		
WHITE White	DW	0645	1600	A/C	8	
FROELICH	EF	1000	1745	Admin. A/C	⑧	
PETERSON Peterson	AK	1330	1630		3 O/T	
SOBER						8 AWOL
TUSZL						AWOL
WALTER	GW	0545	1545	F/C	8 +	2[illegible]
BADAMI				Asst. F/C		AWOL
10 LASECKI Lasecki	EL	0830	1830		10	
Sumner				F/C		AWOL
				Asst. W/C		
BISHOP	OP	0645	1645	A/B Row	8/2OT	
DETAMBLE	RD	0500	1500	C/D Row	10	
Tucker Tucker	LS	0545	1545	Currency	8+2 O/T	
				Currency		
POPE	JA	0700	1700	EPDS - E/T ~~Meteorologist~~		
FURTEE	FK	0557	1557	EPDS - E/T		
MURRAY Murray		0700	1600	EPDS - W/W		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		

— EXHIBIT 10 (cont.) —



DATE AUG 07 1981 PERSONNEL LOG SHIFT 0700-1500

SIGNATURE	INITIALS	ON	OFF	DUTIES	HOURS ON DUTY	HOURS ON LEAVE
BEESON	DB	0630	1700	A/C		
WHITE White	DW	0645	1600	A/C	8	
FROELICH	EF	1000	1745	Admin. A/C	8	
PETERSON Peterson	AX	1330	1630		3 O/T	
SOBER						8 AWOL
TUSZL						AWOL
WALTER Walter	GW	0545	1545	P/C	8 + 2OT	
BADAMI				Asst. P/C		AWOL
LASECKI	EL	0830	1830		10	
				W/C		
				Asst. W/C		
BISHOP	OP	0645	1645	A/B Row	8/2OT	
DETAMBLE	RD	0500	1500	C/D Row	10	
Tucker Tucker	LS	0545	1545	Currency	8+2 O/T	
				Currency		
POPE Pope	JG	0700	1700	~~EPDS - E/T~~ ~~Meteorologist~~		
FURTEE	FK	0557	1557	EPDS - E/T		
MURRAY Murray		0700	1600	EPDS - W/W		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		

EXHIBIT 10 (cont.)

Hearing Ex. 94
AEM 8-21-85

COMPLETED PACKETS DELIVERED TO REGIONAL OFFICE September 14, 1981

1. ABARR, D.G.
2. ALLAN, R.

4. ANDERSON, D.
5. ANDERSON, D.C
6. ANDERSON, L.
7. ANDERSON, R.
8. ANDERSON, T.L.
9. ANDREWS, R.S.
10. ANTROBUS, T.D.
12. AUBREY, R.D.
13. BABARSKIS, V.
15. BACH, F.T.
16. BADAMI, J.D.
17. BAKER, R.
19. BALASH, P.R.
20. BARAN, H. J.
21. BECKER, M.
23. BEDDOW, R.E.
24. BEHENSKY, C.
25. BELMAR, N.J.
26. BENSON, K.
28. BERG, M.
30. BERGSTROM, R.
31. BIAMI, C. W.
32. BICE, J.E.
35. BOHR, P.J.
36. BOLTON, R.C.
37. BOYLAN, J.M.
38. BOZYCH, R.R., Jr.
40. BRANDIS, R.J.
43. BROHOLM, A.A.
44. BRONGER, W.A.
47. BROWN, C.
48. BROWN, F.
50. BUDZYNSKI, R.J.
52. BURKHART, R.
54. CAMPBELL, J.A.
57. CARDINAL, J.T.
58. CARLSON, E.R.
62. CARROLL, B.
66. CEPEDA, T.,Jr.
68. CICHON, M.C.
70. CLARK, J.
71. CLAVEY, R.
73. CLINE, MA.
74. CLOUSER, T.
77. COLLINS, D.W.
78. COLLINS, M.W.
80. COLLINS, R.K.
81. CONNOR, R.E.
82. CONROY, B.
87. CREMMA, F.J.
92. DAVIS, D.
94. DAWSON, S.
96. DEJONG, J.
97. DELUTRI, R.S.
98. DEMAR. P.J.

99. DENNIN, J.W.
100. DERTZ, R.J.
101. DEVAULT, K.
102. DEVAULT, R.
103. DIEZI, L.
104. DIKE, C.
106. DOBBERT, R.
107. DOMBROWSKI, T.M.
108. DOYLE, F.W.
109. DRAEGER, G.A.
110. DRESDEN, K.R.
111. DRYDEN, A.
112. DUFFY, B.P.
113. EDEN, L.N.
114. EDWARDS, R.A.
116. ELLIS, J.
118. ERDMAN, D.
119. FAILOR, A.R.
120. FARRADAY, S.R.
122. FELHAUER, L.
123. FINNEGAN, J."
124. FLEMING, E.
125. FLIEARMAN, T.G.
127. FOOSE, G.
128. FORYS, D. J.
129. FOX, D.
131. FRIELINK, R.E.
132. GALLUCCI, G.
133. GARBE, W.R.
136. GATZ, T.
137. GERBITZ, A.
140. GOEDKE, R.
141. GOIN, M.H.
144. GORMAN, J.W.
148. GRON, D.J.
149. GROW, R.P.

75. CNOTA, W.

94

RECEIVED BY ____________________

.. DATE____________________

EXHIBIT 11

REQUEST A

Ch. I

COMPLETED FILES SENT TO REGIONAL OFFICE, Sept. 15, 1981

41. BRANJEN, E.D.
51. BURGARD, J.F.
53. BURNS, R.W.
56. CAPITELLI, D.S.
65. CENTER, R.J.
88. CRIST, M.R.
89. CROOK, R.R.
91. DAVIDS, B.
93. DAVIS, J.L."
117. ENGEL, S.K.
126. FONTANA, J.
130. FRIEDRICH, H.W.
150. GUSTAFSON, P.E.
151. HAFEMAN, R.L."
152. HALL, S.F.
153. HAMER, L.W.
154. HAMILTON, R.L.
155. HAMILTON, W.L.
158. HARDY, W.
159. HARRIS, W.E.
160. HEDMAN, C.H.
161. HEEG, D.
162. HEFFERN, W.
163. HEFFERNAN, J.A.
166. HEMMINGSEN, D.
167. HENDRICKS, A.
169. HENSLEY, D.
170. HERAK, R.
172. HERMANSON, D.L.
173. HERMES. L.
175. HETH, D.L.
179. HINSHAW, R.J.
180. HOENIG, A.F.
181. HOFFMAN, F.L.
182. HOFMAN, N.E.
184. HOLIC, J.W.
187. HOWE, R.S.
188. HUDDLESTON, D.
189. HUEBNER, T.R.
192. IBSEN, R.E.
193. IWANSKI, J.L.
197. JARNECKE, D.R.
202. KACPROWICZ, F.
204. KARP, D.
206. KAY, T.
207. KEEBAUGH, C.
208. KEHE, S.
209. KELLY, A.
211. KEMPHUES, J.
212. KENNY, J.
216. KIESLER, W.
218. KING, D.E.
219. KING, M.J.
220. KINGERY, W.
222. KLAVOHN, R.
223. KLEIN, R.J.
225. KOHUT, K.
226. KOONTZ, T. J.
227. KRIZMANIC, B.
228. KUHLMAN, J.
229. KUKLA, T.
230. LABODA, R.
231. LACY, M.
232. LAECHELT, L.
233. LAING, W.
234. LAMBRECHT, R.
238. LASKEY, C.
241. LECKBEE, T.
243. LENTZ, T.
244. LESIAK, K.
246. LEWIS, R.
247. LISSAK, A.
250. LOWRY, J."
254. LYDON, P.

74

RECEIVED BY______________________

DATE______________________

REQUEST A

Pg 2

— EXHIBIT 11 (cont.) —

COMPLETED FILES SENT TO REGIONAL OFFICE, Sept. 16, 1981

194. JACOBSON, C.A.
209. JORDAN, P.
240. LAWSON, C.
256. MACKINLAY, W.
257. MAHLBERG, T.
258. MALESKI, T.
259. MANN, R.
260. MANUEL, E.
261. MARCHIEL, W.
263. MARRINER, S.
264. MARSZALEK, J.
265. MARTIN, D.
266. MARTINEZ, L.
267. MASSON, D.
268. MAYES, R.L.
269. MC BRIDE, M.
270. MC CLINTOCK, J.
271. MC CORMACK, W.
272. MC GHINNIS, L.
273. MC GOUGH, D.
275. MC GUIRE, R.
276. MC KAY, G.
278. MC LEAN, J.
279. MC NEAL, T.
280. MC QUINLEY, M.
281. MEEHAN, J.
284. MESTER, M.
285. MILLER, R.H.
286. MILLER, T.E.
287. MILLER, T.J.
288. MILLS, W.
289. MITCHELL, T.
290. MOEN, J.
292. MORRIS, H.
293. MORSE, C.
295. MROTEK, R.
296. MURPHY, B.

37

REQUEST A
Pg 3

— EXHIBIT 11 (cont.) —

COMPLETED FILES SENT TO REGIONAL OFFICE, SEPT. 17, 1981

42. BRETALL, D.J.
59. CARLSON, G.
61. CARLSON, R.B.
85. COUGHLIN, T.
135. GARVIN, E.
145. GRABOWSKI, E.P.
146. GRAY, A.H.,Jr.
165. HEHR, T.
297. MURPHY, W.
298. NELSON, C.
302. NICHOLAS, G.
303. NICHOLS, J.
304. NOFFKE, K.
306. NUERNBERG, W.
307. NYQUIST, P.
308. O'BOYLE, S.
309. O'BRIEN, J.
310. O'BRIEN, R.A.
311. O'CONNOR, D.
312. O'GRADY, D.
313. O'HARROW, P.
315. OKON, W.
317. OLSON, R.
318. OTTENS, W.
320. OWENS, R.
321. PARRY, M.G.
322. PASCHAL, J.
323. PATTERSON, P.
324. PAULEY, J.
325. PAULOCZAK, J.
327. PEARSON, J.
328. PETERSON, C.
329. PETERSON, L.R.
330. PFINGSTON, S.
391. SIMS, C.
171. HERDMAN, L.A.
183. HOGAN, C.H. Jr.
186. HORTON, C.L.
203. KALLAY, W.
214. KERN, C.
251. LOWERY, J.
252. LUCAS, D.

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REQUEST A
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— EXHIBIT 11 (cont.) —

COMPLETED FILES SENT TO REGIONAL OFFICE, September 18, 1981

299. NELSON, D.
300. NELSON, G.
301. NEUKIRCH, B.
331. PFLEGHAAR, S.
332. PICARD, R.
335. POPOVITCH, K.
336. POWLES, J.
337. PRESTON, W.
338. PRICE, W.
339. PRIESSMAN, R.
340. PROKOPEC, R.
342. RADNOFF, R.
343. RANIERI, R.
345. RECKART, D.
346. REED, W.
347. REEDY, M.
348. REICHERT, R.
349. REILLY, A.
350. REPKO, J.
351. RICE, C.'
352. RICKETTS, J.
353,. RING, D.
354. RISTOFF, C.
355. ROBB, R.
356. ROBERTS, B.
358. ROCHE, J.
360. ROHLFING, R.
361. ROLLER, W.
362. ROMASHKO, D.
363. ROOT, R.
364. ROSZKOWSKI, J.
365. ROWELL, D.
366. RUDD, S.
367. RUPPERT, E.
368. RUSCHKEWICZ, P.
369. RUSSELL, D.
370. RUSSELL, S.
372. SANBORN, C.
373. SANDERS, K.
374. SCHALKE, T.
375. SCHARENBERG, D.
376. SCHMAUS, G.
377. SCHMITT, J.
378. SCHUEMANN, D.
380. SCHULTZ, M.
381. SCHWENKE, H.
382. SCOTT, R.
383. SIEBOLD, W.
384. SETCHELL, F.
385. SETTERGREN, V.
386. SHANNON, J.
387. SHAUL, J.
389. SHOGER, R.
390. SIMMS, J.
392. SLABIK, M.
393. SMIESZEK, E.
394. SMITH, L.
395. SMITH, M.

396. SMITH, R.
397. SNOW, C.
399. SOIKIN, R.
400. SPRINGER, C.
401. STAFFIN, D.
402. STAFFORD, A.
403. STAHLBERG, L.
404. STEINBORN, H.
406. STERNBERG, R.
408. STEWART, N.
411. SUMNER, J.
412. SUNDBERG, W.
413. TAGGART, H.
414. TAYLOR, O.
415. TENNIS, J.
416. TERRY, P.
418. THEODORE, H.
419. THOMPSON, J.
421. THOMAS, D.
423. TOMASI, A.
424. TOPE, D.
425. TRACY, N.
426. TUSZL, J.
427. VANDERBEKE, J.
429. VANFLEET, R.
431. VETTORI, W.
432. VEVERKA, A.
433. VOGEL, J.
434. VOGELPOHL, F.
435. VOLPE, V.
436. VOSS, R.
437. WALTER, T.
438. WALTON, C.
439. WEBB, S.
440. WEBER, J.
441. WEBER, R.
442. WENDLING, M.
443. WEST, H.
447. WHITE, N.
448. WICKHAM, A.
449. WIEDNER, T.
450. WIELOSINSKI, M.
451. WIERSMA, D.
455. WILTJER, R.
456. WINZ, J.
457. WOLNY, W.
458. WOOD, B.
459. WRIGHT, R.
460. YEARY, A.
462. ZAREMBA, F.

PROBATIONARIES

34. BLUSIEVICZ, R.
99. DANIELS, S.
134. GARRISON, C.
143. GORE, R.
195. JANAES, T.
196. JANSKI, R.
199. JONES, J.
235. LANDERS, D.
237. LARSON, L.
239. LAVELLE, M.
253. LUETHY, F.
277. MC KINNEY, J.
422. TODD, J.
428. VANDERBLOOMEN, D.

122

— EXHIBIT 11 (cont.) —

REQUEST A

COMPLETED FILES SENT TO REGIONAL OFFICE, September 21, 1981

14. BABIARZ, G.
18. BATDORF, J.
76. COLCLASURE, D.L.
93. DEHAINAUT, L.E.
142. GORALEWSKI, A.F.
156. HANRAHAN, M.F.
157. HARDY, T.
205. KARSTEN, R.
224. KLINE, M.
255. MACK, R.
283. MERRITT, W.
291. MONTGOMERY, G.
359. RODERICK, K.
379. SCHULTZ, E.
405. STENERSON, E.
410. STUPEC, J.
453. WILLER, R.
454. WILSON, J.
463. ZIOLKOWSKI, D.

17

REQUEST A
Pg 6

— EXHIBIT 11 (cont.) —

COMPLETED FILES SENT TO REGIONAL OFFICE, September 25, 1981

2. AKEY, S.M.
22. BECKER, R.
27. BERGAN, J.A.
29. BERGE, D. B.
46. BROSCH, E.
55. CAMPO, G.
79. COLLINS, R.J.
86. COX, R.K.
105. DIRZUWEIT, T.
168. HENRY, P.M.
177. HIGGINS, J.
185. HOOGHKIRK, G.
201. JOWERS, J.
210. KEHM, N.
213. KENT, W.L.
217. KING, D.A.
236. LANGDON, C.
248. LOCKHART, N.
282. MEILER, K.
305. NOREN, D.
316. OLSON, J.
398. SOBER, P.

?

EXHIBIT 11 (cont.)

REQUEST A Pg 7

~~REQUEST~~ get

COMPLETED FILES SENT TO REGIONAL OFFICE, September 28, 1981

67. CARLSON, R.A.
69. CLARK, D.C.
72. CLEARY, J.R.
83. CONTI, W.
138. GEROVAC, L.S.
139. GILLETTE, R.L.
147. GREEN, L.C.
174. HESS, J.
178. HIMMELMAN, D.J.
198. JOHNSON, D.
221. KISH, D.
242. LEE, T.A.
249. LOGERQUIST, D.
274. MC GUINNESS, M.
294. MOSES, H.
314. OBREMSKI, D.
319. OWENS, G.
326. PEACOCK, J.
333. PIORKOWSKI, P.
334. PLUCINSKI, A.
341. PRZYLUCKI, S.
344. RASMUSSEN, L.
407. STEVENS, E.
409. STEWART, R.
420. THOMAS, A.J.
475. TOEPFER, T.A.
444. WEST, P.
445. WETHERN, C.
115. ELWARDT, H.

29

— EXHIBIT 11 (cont.) —

REQUEST A Pg 5

COMPLETED FILES TAKEN TO THE REGIONAL OFFICE, October 1, 1981

49. BRUCK, K.

371. SALVAGGIONE, C

389. SIERGEY, W.

417. THALMAN, T.

430. VAUGHN, T.

452. WIESBAUER, K.

461. YOUNG, G.

MULTIPLE COPIES OF ATTENDANCE RECORDS SENT TO REGIONAL OFFICE, Oct. 1, 1981

* 34. BLUSIEWICZ, R.
* 90. DANIELS, S.
* 134. GARRISON, C.
* 143. GORE, R.
* 195. JANAES, T.
* 196. JANSKI, R.
* 199. JONES, J.
* 235. LANDERS, D.
* 239. LAVELLE, M.
* 253. LUETHY, F.
* 277. MC KINNEY, J.
* 422. TODD, J.
* 428. VANDERBLOOMEN, D.

* NOTE: These are all Probationaries and will not have a hearing officer letter of authorization included.

ALL ENVELOPES BEARING RED FILE NUMBERS IN UPPER RIGHT CORNER WILL CONTAIN ONLY COPIES OF: T&A's
LOGS
SCHEDULES
HEARING OFFICER AUTHORIZATIO

U.S. Department
of Transportation

Federal Aviation
Administration

Great Lakes Region

2300 East Devon Avenue
Des Plaines, Illinois 60018

NOV 16 1981

Mr. R. J. Payne
Regional Director
Merit Systems Protection Board
230 South Dearborn Street, 31st Floor
Chicago, Illinois 60604

Dear Mr. Payne:

This is in reference to the appeal of Timothy P. Clauser, Chicago Center

1. The appellant has neither filed a grievance nor a formal complaint of discrimination in connection with this appeal.

2. Enclosed as Tab 1 is the notice of proposed adverse action.

3-4. Enclosed as Tab 2 is the appellant's written reply and the summary of his oral presentation, (where applicable.)

5. Enclosed as Tab 3 is the notice of decision.

6. Enclosed as Tab 4 is the SF-50 documenting the action under appeal.

7. Evidence of the dates the appellant received the notices are documented with those letters enclosed as Tab 1 and 3 respectively.

8. Evidence relied upon is enclosed as Tab 5. Part of the evidence relied upon by the agency is the daily facility sign-in logs. We have included only those daily sign-in logs pertaining to the appellant. However, it is possible that during the removal process, the appellant had occasion to review the sign-in logs for the entire facility.

9. We deny all allegations raised by the appellant.

I certify that the above information is true and correct and copies of all materials are true copies.

Sincerely,

Richard P. Shewfelt

Richard P. Shewfelt
Chief, Labor Relations Branch

Enclosures

EXHIBIT 12

PACKAGES TO REGIONAL OFFICE

BOX 1

3. ALLAN, R.
5. ANDERSON, D.C.
6. ANDERSON. L.
7. ANDERSON, R.
8. ANDERSON, T.
9. ANDREWS, R.
10. ANTROBUS, T.
12. AUBREY, R.
13. BABARSKIS, V.
15. BACH, B.
16. BADAMI, J.
19. BALASH, P.
20. BARAN, H.
23. BEDDOW, R.
24. BEHENSKY, C.
25. BELMAR, N.
26. BENSON, K.
28. BERG, M.
30. BERGSTROM, R.
31. BIAMI, C.
32. BICE, J.
35. BOHR, P.
36. BOLTON, R.
37. BOYLAN, J.
38. BOZYCH, R.
40. BRANDIS, R.
43. BROHOLM ,A.
44. BRONGER, W.
50. BUDZYNSKI, R.
52. BURKHART, R.
54. CAMPBELL, J.
57. CARDINAL, J.
58. CARLSON, E.
61. CARLSON, R.B.
62. CARROLL, B.
66. CEPEDA, T.
68. CICHON, M.
70. CLARK, J.
71. CLAVEY, R.
73. CLINE, M.
74. CLOUSER, T.

(10-16-81)
41

BOX 2

78. COLLINS, M.W.
81. CONNOR, R.E.
82. CONROY, B.
92. DAVIS, D.M.
94. DAWSON, S.
96. DEJONG, J.
97. DELUTRI, R.
98. DEMAR, P.
101. DEVAULT, K.
102. DEVAULT, R.
103. DIEZI, L.
106. DOBBERT, R.
113. EDEN, L.
172. HERMANSON, D.
179. HINSHAW, R.
193. IWANSKI, J.
197. JARNECKE, D.
211. KEMPHUES, J.
230. LABODA, R.
265. MARTIN, D.
285. MILLER, R.H.
293. MORSE, C.
324. PABLEY, J.
332. PICARD, R.
347. REEDY, M.
348. REICHERT, R.
361. ROLLER, W.
362. ROMASHKO, D.
382. SCOTT, R.
386. SHANNON, J.
398. SIMMS, J.
402. STAFFORD, A.
423. TOMASI, A.
424. TOPE, D.
425. TRACY, N.
426. TUSZL, J.
429. VAN FLEET, R.
435. VOLPE, V.
459. WRIGHT, R.

(10-19-81)
39

BOX 3

77. COLLINS, D.W.
99. DENNIN, J.
100. DERTZ, R.
104. DIKE, C.
107. DOMBROWSKI, T.
108. DOYLE, F.
109. DRAEGER, G.
110. DRESDEN, K.
112. DUFFY, B.
114. EDWARDS, R.
116. ELLIS, J.
118. ERDMAN, D.
119. FAILOR, A.
122. FELHAUER, L.
124. FLEMING, E.
125. FLIERMAN, T.
129. FOX, D.
131. FRIELINK, R.
136. GATZ, T.
140. GOEDKE, R.
141. GOIN, M.
144. GORMAN, J.
147. GREEN, L.C.
148. GRON, D.
149. GROW, R.
150. GUSTAFSON, P.

(10-21-81)
26

BOX 4

151. HAFEMAN, R.
152. HALL, S.
153. HAMER, L.
158. HARDY, W.
159. HARRIS, W.
160. HEDMAN, G.
161. HEEG, G.
162. HEFFERN, W.
163. HEFFERNAN, J.
167. HENDRICKS, A.
169. HENSLEY, D.
173. HERMES, L.
175. HETH, D.
178. HIMMELMAN, D.
180. HOENIG, A.
181. HOFFMAN, F.
184. HOLIC, J.
187. HOWE, R.
188. HUDDLESTON, D.
189. HUEBNER, T.
192. IBSEN, R.
194. JACOBSON, G.
202. KACPROWICZ, F.
204. KARP, D.
207. KEEBAUGH, C.
209. KELLY, A.
212. KENNY, J.
216. KIESLER, W.
219. KING, M.
220. KINGERY, W.
223. KLEIN, R.J.
225. KOHUT, K.
226. KOONTZ, T.
229. KUKLA, T.
231. LACY, M.
232. LAECHELT, L.
238. LASKEY, C.

(10-23-81)
37

– EXHIBIT 13 –

PACKAGES TO REGIONAL OFFICE

BOX 5

2. AKEY, S.M.
242. LEE, T.
247. LISSAK, A.
250. LOWRY, J.
254. LYDON, P.
256. MACKINLAY, W.
257. MAHLBERG, T.
258. MALESKI, T.
260. MANUEL, E.
259. MANN, R.
264. MARSZALEK, J.
266. MARTINEZ, L.
268. MAYES, R.
269. MC BRIDE, M.
273. MC GOUGH, D.
278. MC LEAN, J.
287. MILLER, T. J.
308. O'BOYLE, E.
315. OKON, W.
317. OLSON R.
320. OWENS, R.
321. PARR, M.
323. PATTERSON, P.
330. PFINGSTON, S.
331. PFLEGHAAR, S.
336. POWLES, J.
338. PRICE, W.

(10-23-81)

27

BOX 6

227. KRIZMANIC, B.
263. MARRINER, S.
272. MC GHINNIS, L.
276. MC KAY, G.
280. MC QUINLEY, M.
284. MESTER, M.
289. MITCHELL, T.
296. MURPHY, B.
297. MURPHY, W.
298. NELSON, G.
309. O'BRIEN, J.
310. O'BRIEN, R.
325. PAULOCSAK, J.
327. PEARSON, J.
335. POPOWITCH, K.
337. PRESTON, W.
349. REILLY, A.
350. REPKO, J.
351. RICE, C.
352. RICKETTS, J.
353. RING, D.
354. RISTOFF, G.
355. ROBB, R.
358. ROCHE, J.
360. ROHLFING, R.
363. ROOT, R.
366. RUDD, S.
367. RUPPERT, E.
369. RUSSELL, D.
370. RUSSELL, S.
373. SANDERS, K.
374. SCHALKE, T.
375. SCHARENBERG, D.
376. SCHMAUS, G.
378. SCHUEMANN, D.

(10-26-81)

35

BOX 7

380. SCHULTZ, M.
383. SIEBOLD, W.
384. SETCHELL, F.
391. SIMS, C.
392. SLABIK, M.
393. SMIESZEK, E.
397. SNOW, C.
400. SPRINGER, G.
401. STAFFIN, D.
403. STAHLBERG, L.
404. STEINBORN, M."
406. STERNBERG, R.
408. STEWART, N.
411. SUMNER, J.
412. SUNDBERG, W.
413. TAGGART, H.
415. TENNIS, J.
416. TERRY, P.
418. THEODORE, H.
427. VANDERBEKE, J.
432. VEVERKA, A.
433. VOGEL, J.
434. VOGELPOHL, F.
437. WALTER, T.
438. WALTON, C.
439. WEBB, S.
442. WENDLING, M.
443. WEST, H.
448. WICKHAM, A.
449. WIEDMER, T.
455. WILTJER, R.
458. WOOD, B.

(10-27-81)

32

BOX 8

1. ABARR, D.G.
4. ANDERSON, D.D.
14. BABIARZ, G.
17. BAKER, R.
21. BECKER, M.'
22. BECKER, R.
27. BERCAW, J.A.
29. BERGE, D.B.
41. BRANNEN, E.D.
42. BRETALL, D.J.
46. BROSCH, E.
47. BROWN, C.
48. BROWN, F.
49. BRUCK, K.
51. BURGARD, J.F.
53. BURNS, R.W.
55. CAMPO, G.
56. CAPPITELLI, D.
59. CARLSON, G.
60. CARLS W, R.A.
65. CENTER, R.J.
69. CLARK, D.C.
72. CLEARY, J.R.
75. CNOTA, W.
76. COLCLASURE, D.L.
79. COLLINS, R.J.
80. COLLINS, R.K.
85. COUGHLIN, T.
86. COX, R.K.

(10-30-81)

29

COPIES OF RECORDS SENT TO REGIONAL OFFICE

BOX 9

87. CRENNA, F. J.
88. CRIST, M.
89. CROOK, R.
91. DAVIDS, B.
93. DAVIS, J.
95. DEHAINAUT, L.
105. DIRZUWEIT, T.
111. DRYDEN, A.
115. [illegible], H.
117. ENGEL, S.
120. FARRADAY, S.
123. FINNEGAN, J.
126. FONTANA, J.
127. FOOSE, G.
128. FORYS, D.
130. FRIEDRICH, H.
132. GALLUCCI, G.
133. GARBE, W.
135. GARVIN, E.
137. GERBITZ, A.
138. GEROVAC, L.
139. GILLETTE, R.
142. GORALEWSKI, A.
145. GRABOWSKI, E.
146. GRAY, A.
149. GROW, R.
154. HAMILTON, R.L.
155. HAMILTON, W.L.
156. HANRAHAN, M.

(10-30-81)
29

BOX 10

83. CONTI, W.
157. HARDY, T.
165. HEHR, T.
166. HEMMINGSEN, D.
168. HENRY, P.
170. HERAK, R.
171. HERDMAN, L.A."
174. HESS, J.
177. HIGGINS, J.
182. HOFMAN, N.E.
183. HOGAN, C.H.
185. HOOGHKIRK, G.
186. HORTON, C.L.
198. JOHNSON, D.
200. JORDAN, P.
201. JOWERS, J.
203. KALLAY, W.
206. KAY, T.
208. KEHE, S.
210. KEMM, N.
214. KERN, C.
217. KING, D.A.
218. KING, D.E.
221. KISH, D.
205. KARSTEN, R.

(11-4-81)
25

BOX 11

222. KLAVOHN, R.
228. KUHLMAN, J.
230. LAING, W.
234. LAMBRECHT, R.
236. LANGDON, C.
241. LECKBEE, T.
243. LENTZ, T.
244. LESIAK, K.
246. LEWIS, R.
248. LOCKHART, N.
249. LOGEROUIST, D.
251. LOWERY, J.
252. LUCAS, D.
255. MACK, R.
261. MARCHIEL, W.
267. MASSON, D.
270. MC CLINTOCK, J.
271. MC CORMACK, W.
274. MC GUINNESS, M."
275. MC GUIRE, R.
279. MC NEAL, T.
281. MEEHAN, J.
282. MEILER, K.
283. MERRITT, W.
286. MILLER, T.E.
288. MILLS, W.
290. MOEN, J.
291. MONTGOMERY, G.
292. MORRIS, H.
18- BATDORF

(11-4-81)
30

BOX 12

240. LAWSON, C.
294. MOSES, H.
295. MROTEK, R.
298. NELSON, C.
299. NELSON, D.
301. NEUKIRCH, B.
302. NICHOLAS, G.
303. NICHOLS, J.
304. NOFFKE, K.
305. NOREN, D.
306. NUERNBERG, W.
307. NYQUIST, P.
311. O'CONNOR, D.
313. O'HARRIW, P.
314. OBREMSKI, D.
316. OLSON, J.
318. OTTENS, W.
319. OWENS, [illegible].
322. PASCHAL, J.
326. PEACOCK , J.
328. PETERSON, C.
329. PETERSON, L.R.
333. PIORKOWSKI, P.
334. PLUCINSKI, A.
339. PRIESSMAN, R.
340. PROKOPEC, R.

(11-5-81
26

BOX 13

213. KENT, W.
312. O'GRADY, D.
341. PRZYLUCKI, S.
342. RADNOFF, R.
343. RANIERI, R.
344. RASMUSSEN, L.
345. RECKART, D.
346. REED, W.
356. ROBERTS, S.
359. RODERICK, K.
364. ROSZKOWSKI, J.
365. ROWELL, D.
368. RUSCHKEWICZ, P.
371. SALVAGGIONE, C.
372. SANBORN, C.
377. SCHMITT, J.
379. SCHULTZ, E.
381. SCHWENKE, H.
385. SETTERGREN, V.
388. SHOGER, R.
389. SIERGEY, W.
394. SMITH, L.
396. SMITH R.
398. SOBER, P.
399. SONKIN, R.

25

BOX 14

387. SHAUL, J.
405. STENERSON, E.
407. STEVENS, E.
409. STEWART, R.
410, STUPEC, J.
414. TAYLOR, O..
417. THALMAN, T.
419. THOMPSON, J.
420. THOMAS A. J.
421. THOMAS D.
475. TOEPFER, T.
430. VAUGHN, T.
431. VETTORI, W.
436. VOSS, R.
440. WEBER, J.
441. WEBER, R.
444. WEST, P.
445. WETHERN, C.
447. WHITE N.
450. WIELOSINSKI, M.
451. WIERSMA, D.
452. WIESBAUER, K.
453. WILLER, R.
454. WILSON, J.
456. WINZ, J.
457. WOLNY, W.
460. YEARY, A.
461. YOUNG, G.
462. ZAREMBA, F.
463. ZIOLKOWSKI, D.

30

PERSONNEL ON LEAVE DURING WEEK OF 8/2/81

	FILE #	
1.	ok 3	ALAN, R.
2.	ok 4	ANDERSON, D.D.
3.	ok 13	BABARSKIS, V.
4.	ok 22	BECKER, R.
5.	ok 27	BERCAW, J.A.
6.	ok 31	BIAMI, C.W.
7.	35 — ✓	BOHR, P.J.
8.	36 —	BOLTON, R.C.
9.	ok 44	BRONGER, W.A.
10.	ok 49	BRUCK, K.S.
11.	53 —	BURNS, R.W.
12.	ok 77	COLLINS, D.W.
13.	ok 81	CONNOR, R.E.
14.	ok 113	EDEN, L.
15.	ok 120	FARRADAY, S.R.
16.	ok 137	GERBITZ, A.
17.	ok 139	GILLETTE, R.L.
18.	146 +	GRAY, A.H. Jr.
19.	ok 165	HEHR, T.
20.	ok 174	HESS, J.
21.	179 —	HINSHAW, R.J.
22.	182 — ✓	HOFMAN, NE.
23.	183 —	HOGAN, C.H. Jr.
24.	193 —	IWANSKI, J.L.
25	ok 197	JARNECKE, D.R.
26.	ok 198	JOHNSON, D.
27.	ok 213	KENT, W.L.
28.	217 +	KING, D.A.
29.	ok 224	KLINE, M.
30.	234 —	LAMBRECHT, R.
31.	ok 242	LEE, T.A.
32.	ok 255	MACK, R.
33.	ok 265	MARTIN, D.
34.	271 —	MC CORMACK, W.
35.	285 — ✓	MILLER, R.H.
36.	ok 293	MORSE, C.
37.	ok 307	NYQUIST, P.
38.	ok 329	PETERSON, L.R.
39.	ok 389	SIERGEY, W.
40	ok 398	SOBER, P.
41	ok 407	STEVENS, E.
42	ok 475	TOEPFER, T.A.
43	ok 435	VOLPE, V.
44	452 +	WIESBAUER, K.

EXHIBIT 14

December 15, 1981

On Monday, December 7, 1981 at 9:00 a.m., Messrs Wes Walker, Dick Schufelt, George Gunter and Robert Miller meet in the Regional Office to discuss the attached list of Chicago Center personnel who had leave involved the first week of the strike.

Of the list of 44 names, the Regional Office agreed that 31 of the cases were adequate as submitted; three were marginal; and 10 needed additional data to be relatively strong cases to the MSPB.

– EXHIBIT 14 (cont.) –

Review list Walker Schefeld Hunter Miller Reviewed 12-7-81 one

CHICAGO CENTER PERSONNEL ON LEAVE

		(FILE #)		
OK	1.	3	ALLAN, R.	✓ 5 ET
OK	2.	22	BECKER, R.	✓ 8 EH
	3. ⊕	35	BOHR, P.J.	✓ 4 EW
	④ +	36	BOLTON, R.C.	✓ 7 ET
	5. +	53	BURNS, R.W.	✓ 7 WW
OK	6.	77	COLLINS, D.W.	✓ 5 ET
OK	7.	81	CONNOR, R.E.	✓ 1 NW
OK	8.	113	EDEN, L.	✓ 5 WW
OK	9.	137	GERBITZ, A.	✓ 5 EH
OK	10.	139	GILLETTE, R.L.	✓ 4 WW
	11. GRM	146	GRAY, A.H. Jr.	✓ 6 WT
OK	12.	165	HEHR, T.	✓ 3 EH
	13. +	179	HINSHAW, R.J.	✓ ~~8 EH~~ 1 WH
	14. ⊕	182	HOFMAN, N.E.	2 WW ✓
	15. +	183	HOGAN, C.H. Jr.	1 EW ✓
	⑯ +	193	IWANSKI, J.L.	8 EH ✓
OK	17.	197	JARNECKE, D.R.	8 EH ✓
OK	18.	213	KENT, W.L.	3 EW ✓
	19. GRM	217	KING, D.A.	1 WT ✓
	⑳ +	234	LAMBRECHT, R.	7 EW ✓
OK	21	242	LEE, T.A.	6 WW ✓
OK	22	265	MARTIN, D.	3 WH ✓
	23. +	271	MC CORMACK, W.	01 WH ✓
	24 ⊕	285	MILLER, R.H.	5 WW ✓
OK	25	307	NYQUIST, P.	07 ET ✓
OK	26	329	PETERSON, L.R.	06 WT ✓
OK	27.	389	SIERGEY, W.	01 ET ✓
OK	28.	398	SOBER, P.	FC ✓
OK	29.	407	STEVENS, E.	06 WT ✓
OK	30.	475	TOEPFER, T.A.	3 WW ✓
OK	31	435	VOLPE, V.	05 ET ✓
	㉜ GRM	452	WIESBAUER, K.	03 EW

EXHIBIT 14 (cont.)

addition to appeal file (noted on 11/4/82 at onset of hearing)

11-4-82

STATEMENT FOR RECORD

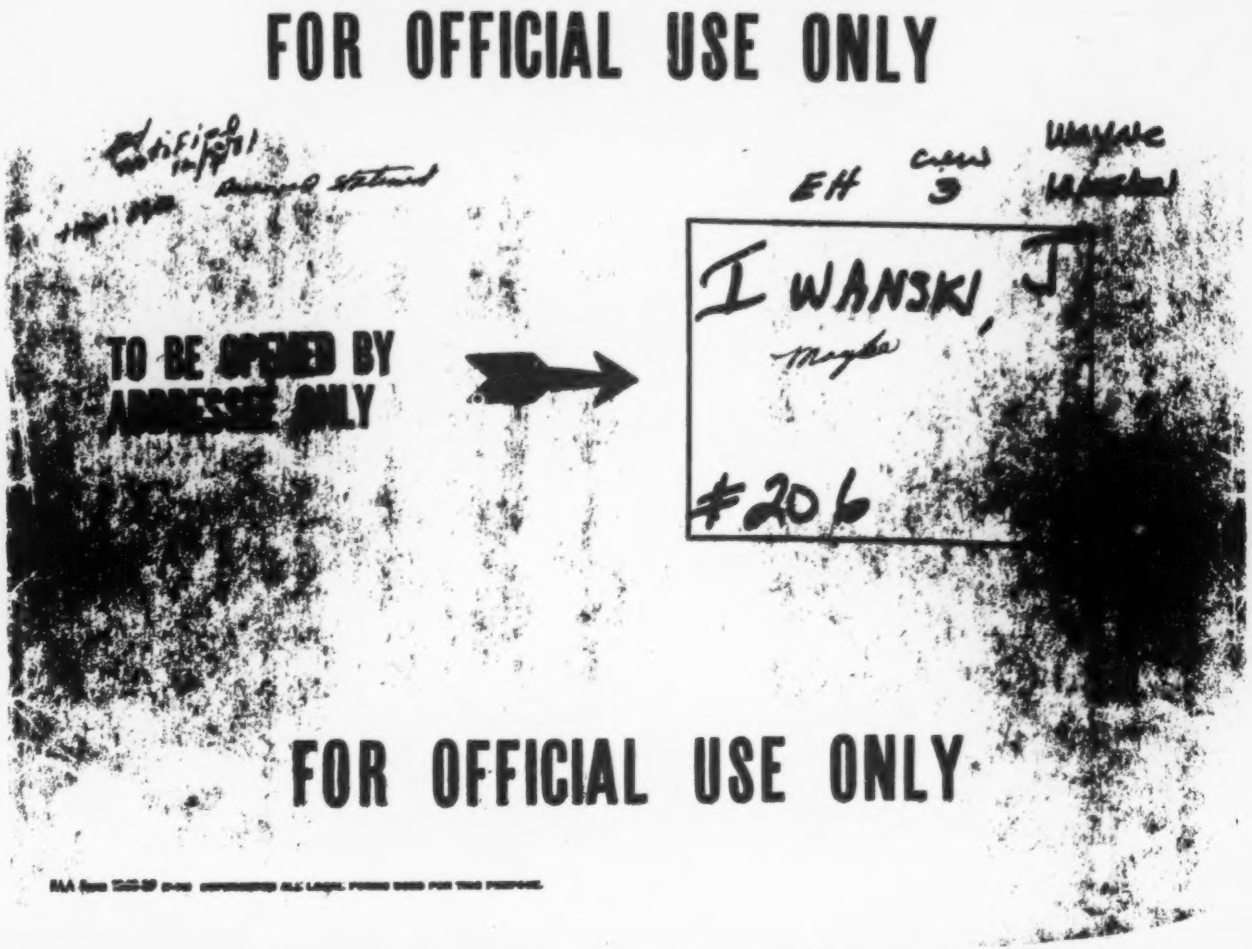
On August 2, 1981, I worked a 12-8 shift, and attempted to contact Mr. Iwanski regarding the possibility of a "job action" on August 3, 1981, and the cancellation of his Annual Leave in the event of that action.

I talked to his wife, as he wasn't home, and relayed the message to her asking him to call in on August 3, 1981, to determine his work schedule. Her reply was, "he is in the middle of a lake fishing and I don't know if I will see him."

Due to the discussions on a daily basis, prior to August 2, 1981, in my mind, Mr. Iwanski was aware that if a job action did occur, his Annual Leave was cancelled.

Wayne Winslow
WAYNE WINSLOW
Team Supervisor
#3 EH

— EXHIBIT 15 —



FOR OFFICIAL USE ONLY

[illegible]

EH crew 3 [illegible]

TO BE OPENED BY ADDRESSEE ONLY

IWANSKI, J

Maybe

#206

FOR OFFICIAL USE ONLY

EXHIBIT 16

12/8/81

MEMO FOR RECORD

I was directed by Mr. Beeson to contact all East Wing personnel on Annual Leave. They were to contact the Center on the following Monday because of Annual Leave being cancelled if there was a job action or a strike.

I specifically remember calling Bob Lambrecht and advising him of this fact. In my mind, he understood what was required of him if he were on Annual Leave.

The following weeks the subject of cancelled Annual Leave was brought up several times and he insisted that it was not legal to cancel approved Annaul Leave.

In my mind, he understood that if there were a job action/strike his Annual Leave was cancelled.

Sy Kok

SY KOK

— EXHIBIT 16 (cont.) —

12/9/81

MEMO FOR RECORD

In a conversation with Mr. Hinshaw, I was trying to persuade him to take a position as a temporary Team Supervisor. He indicated his unwillingness to take the position, giving his reason as being if PATCO did strike, he was obligated to go out with them.

There is no doubt in my mind that Mr. Hinshaw was aware that if a job action occurred his Annual Leave would be cancelled and that he would be required to return to work.

BILLY E. MINGUS

— EXHIBIT 16 (cont.) —

December 17, 1981

MEMO FOR RECORD

Reference: ROBERT H. MILLER, #3 WW

During conversations in May and June, 1981, with controllers, either me or by other Team Supervisors in the West Wing, it was generally understood that personnel on Annual Leave regardless of their location would contact this facility (Chicago Center) to determine their work status. It was obvious that this would hold true for any work action that might take place throughout the year.

It is my opinion that Mr. R. H. Miller was well aware that he should contact Chicago Center and determine his work status as soon as he was aware that a work action occurred. To my knowledge Mr. R. H. Miller did not contact this facility to determine his status until he was given a notice of proposed suspension.

James E.
JAMES E. MARTINSON
Team Supervisor

EXHIBIT 16 (cont.)

12/9/81

MEMO FOR RECORD

William McCormack was on my crew in West High Altitude. He and my other crew members were involved in numerous conversations with me, reference job action and the Agency's stand.

There is no doubt in my mind that Mr. McCormack was aware that if a job action occurred his Annual Leave would be cancelled and that he would be required to return to work.

BILLY E. MINGUS

— EXHIBIT 16 (cont.) —

JUL 03 1981 PERSONNEL LOG

mids

SIGNATURE	INITIALS	ON	OFF	DUTIES	HOURS ON DUTY	HOURS ON LEAVE
FISHER Don Fisher	FR	2230	0630	ASST. CHIEF	8	
				FLOW/WX		
	HIGH	ALTITUDE				
HENDRICKS	AH	2400	0700	A18R H/L 2300/2400	7	HL
MALESKI	TM	2300	0700	A19D/A22D	8	
JARNECKE	AJ	2300	0700	A21R	8	
KUHLMAN	J.K	2300	0700	B17R	8	
HINSHAW	OQ	2400	0700	B16D H/L 2300-2400	7	1 H/L
STERNBERG	RB	2300	0700	B17H	8	
	EAST					
HOGAN Hogan	IP	2300	0700	B1	8	
BRUCK	YR	2300	0700	~~B1D~~/A11D	8	
HERMANSON	HH	2300	0700	B54R	8	
KING	BK	2300	0700	A7R	8	
	NORTH					
VAUGHN Vaughn	TV	2300	0700	D11D	8	
HENSLEY	HY	2300	0700	D12R	8	
	WEST	TERMINAL				
ROWELL Rowell	RL	2231	0631	D20D	8	
SCHOOF Schoof	GF	2300	0700	D21R	8	
	WEST	WING				
BURNS	BT	2230	0650	C24R/C25D	8	
LENTZ	LZ	2230	0650	D29D	8	
LESIAK	KE	2231	0631	D30R	8	

EXHIBIT 17

DAILY RECORD OF FACILITY OPERATION

PAGE NO.

DATE

CHECKED BY

CHIEF

LOCATION	IDENTIFICATION	TYPE FACILITY	OPERATING POSITION

TIME (GMT)	REMARKS

I CERTIFY that entries above are correct; that all scheduled operations have been accomplished, except as noted, and that all abnormal occurrences and conditions have been recorded.	SIGNATURE(S) OF WATCH SUPERVISOR(S)

FAA Form 7230-4 (2-67)

EXHIBIT 17 (cont.)

NORTH WING
PERSONNEL LOG

DATE 8-3-81

SHIFT 07-15

SIGNATURE	INITIALS	ON	OFF	DUTIES	HOURS ON DUTY	HOURS ON LEAVE
Adair				AREA SUPERVISOR		
				TEAM SUPERVISOR		
				TEAM SUPERVISOR		
G Snow				~~[illegible]~~ D50		8AWOL
6 Marszalek				D51		8AWOL
Grow				D51/H		8AWOL
Rohlfing				~~DJA – NEW~~ D50H		8AWOL
Daniel				D7 – GRB		[illegible]
Riley						[illegible]
Larson						8AWOL
Collins				C10A – GRB		8AWOL
				B24 – 27		
				Study		
				Study		
				Study		
				A/L S/L O/B		
Mack	—	—	—	—	[illegible]	8 A/L
~~[illegible]~~				—	—	8 A/L

10

NORTH WING
PERSONNEL LOG

DATE 8-3-81

SHIFT 07-15

SIGNATURE	INITIALS	ON	OFF	DUTIES	HOURS ON DUTY	HOURS ON LEAVE
Adair				AREA SUPERVISOR		
				TEAM SUPERVISOR		
				TEAM SUPERVISOR		
G Snow				D50		8AWOL
G Marszalek				D51		8AWOL
Grow				D51/H		8AWOL
Rohlfing				D50H		8AWOL
Daniel				D7 – GRB		[illegible]
Riley						[illegible]
Larson						8AWOL
Collins				C10A – GRB		8AWOL
				B24 – 27		
				Study		
				Study		
				Study		
				A/L S/L O/B		
Mark	—	—	—	—	[illegible]	8 A/L
~~Forrensen~~	—	—	—	—	—	8 A/L

EXHIBIT 18

DAILY RECORD OF FACILITY OPERATION

PAGE NO.

DATE

CHECKED BY

CHIEF

LOCATION	IDENTIFICATION	TYPE FACILITY	OPERATING POSITION

TIME (GMT)	REMARKS

I CERTIFY that entries above are correct; that all scheduled operations have been accomplished, except as noted, and that all abnormal occurrences and conditions have been recorded.	SIGNATURE(S) OF WATCH SUPERVISOR(S) Robert C. Miller

FAA Form 7230-4 (3-67) FORMERLY FAA FORM 366

— EXHIBIT 18 (cont.) —

August 28, 1981

MEMO FOR RECORD

On Sunday, August 2, 1981, I worked a "12" shift. At approximately 1520Z I attempted to call the following individuals with the following results:

R. Becker - No answer

J. Hess - No answer

★ J. Kwanski- Talked to his wife, told her to have him call in on 8/3/81. She said he was fishing and couldn't be reached.

Hehr - I notified him while on shift and I believe it was Saturday or Sunday before the strike.

Rasmussen - no contact.

Wayne Winslow
Wayne Winslow
#3 EH Acting Team Supervisor

- EXHIBIT 19 -

August 27, 1981

[redacted]

J. L. Iwanski was on annual leave during the week of August 3, 1981.

On Saturday, August 1, 1981, I was on the 3 - 11 shift, and attempted to call Iwanski toward the end of the shift. He was on the list of people to be contacted.

Approximately 8:30 p.m. August 1, 1981, I called and talked to his wife. She said he was out. I asked her to have Iwanski call the East High Area on the next day August2, 1981. On Sunday, August 2, 1981, I was on the 3 - 11 shift and still had the list of people to be called. No marking other than mine appeared after Iwanski's name.

I attempted to call him again at approximately 8:42 p.m. and was unsuccessful. on 8/2/81. I never did make contact prior to August 3, 1981.

No further contact or attempt was made by me.

Adolph Salinas Jr.
A. Salinas, Jr.
#2 EH Team Supervisor

EXHIBIT 19 (cont.)

August 29, 1981

MEMO FOR RECORD

Francis Broich advised he talked to L. E. Rasmussen on the Friday prior to the strike and told him to call in on Monday August 3rd.

L. E. Rasmussen was observed on the picket line by Team Supervisor Bronson and Winslow.

Team Supervisors Bronson, Fisher, Carter and Winslow stated they observed [redacted], T. Hehr, R. Becker and J. Hess on the picket line.

Ed. Froelich

— EXHIBIT 19 (cont.) —

CUNNINGHAM AND WOOD

ATTORNEYS AT LAW

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TELEPHONE 312/897-3375

April 17, 1984

Linda Wawzenski, Esq.
Assistant U.S. Attorney
219 South Dearborn Street
14th Floor
Chicago, Illinois 60604

RE: Ristoff v. FAA, 83 C 7941
Document Alteration Issue

Dear Ms. Wawzenski:

Pursuant to our recent discussions on the above issues, I am attaching copies of some of the key documents and MSPB decisions relating to the massive falsification of government records at the Chicago ARTCC. My own investigation is limited to what I was able to discover in prior MSPB litigation and other evidence which has been turned over to me by other attorneys.

Before going into specific examples of alterations, I think it would be appropriate to describe the timekeeping procedures used by the Chicago Center prior to August 3, 1981.

There are three basic timekeeping documents used by the FAA: a "watch-schedule"; a "daily facility sign-in log"; and the Time and Attendance report. The watch schedule is "posted" (meaning locked-in) 21 days in advance. Changes in the watch schedule would appear in either "swap books" or directly on the schedule by cross-off and supervisor's initials. The working watch schedule, with approved changes, was what was used by the team supervisors to prepare the daily facility sign-in logs. This was usually prepared the day before the shift so as to assure that changes on the watch schedule showed up on the sign-in logs. The sign-in log served a dual function in that it documented assignments of particular controllers to partricular sectors and jobs (e.g., radar, manual or "A" side). The sign-in log is a two-sided form with the reverse side having a section to document incidents or record changes in assignments made in mid-shift and, at the bottom, a certification clause calling for the supervisor's signature.

– EXHIBIT 20 –

When controllers reported for duty they would sign their names adjacent to the printed name, intial the adjacent column and record their on-duty and off-duty time.

At the end of a shift, the supervisor would use the sign-in log to transpose the duty hours or leave (or AWOL) to the time and attendance report. The T and A report was the document forwarded to Kansas City for payroll purposes.

Beginning August 3, 1981, the timekeeping at the Chicago Center was understandably thrust into chaos. The supervisors were needed to work air traffic control duties and could no longer perform their function in preparing and maintaining these records. The daily facility sign-in logs had been prepared for use on August 3, 1981 on the day before. However, only some sign-in logs were prepared for August 4th and fewer still for the 5th and 6th. Even the sign-in logs which were prepared were not actually used for timekeeping purposes. They were made unreliable because the personnel department needed the watch schedules to prepare the adverse action letters in volume. Testimony from Richard Pender, who was then the Personnel Director at Chicago Center, confirmed that he removed the watch schedules from the areas for purposes of preparing the proposed removal letters (filling in the blanks for the scheduled shift). I recently called Mr. Pender to verify what he used to prepare the letters and he confirmed that the watch schedule only was used and not the sign-in logs which later appeared in evidence with the "AWOL" alterations on them. (Pender now works with the Veterans Administration, having left the Center in September, 1981).

As I am sure you are aware from the deposition of Junior Bartels and LeRoy Halle, supervisors were not even asked if an employee was excused or AWOL and there is abundant evidence that the "AWOL" which later appeared on the questionable sign-in logs in the MSPB packets, was placed on these records by personnel under the direction of Robert Miller. Miller was an Evaluations Officer at the time of the PATCO job action but was assigned specific duties with respect to the adverse-action files. One of these duties was to make it appear as if the agency sign-in logs had been maintained in the usual and ordinary course of business.

In order to demonstrate what actually formed the basis of the Chicago Center's timekeeping -- post August 3rd, I am attaching a copy of the genuine document used to record time on August 4, 1981. (Exhibit 1). The FAA is not aware that we are in possession of this document, and I do not want them aware of it at this time. If Exhibit 1 is compared with Exhibit 2, you see 2 sign-in logs for "west high". Exhibit 1 is the document which was actually used to record time and attendance for "west high" for August 4, 1981. Exhibit 2 is one of the partially altered documents (the printed names below "Byrd" and "AWOL" were added later by persons unknown). Exhibit 2 appeared in the MSPB packets of some ATCS appellants as tne "business record" of the agency to show absence. Exhibit 2 was not the record useo to record time and attendance for "west high", but was certified as a true copy of the record by Richard Shewfelt, the agency representative. Exhibit 3 is particularly conclusive evidence of the outright manufacture of a record. Note that Exhibit 3 is still another version of the same "west high" area for the same personnel for the same shift on August 4, 1981. Apparently, there were several clerks, working under Robert Miller's direction, who were manufacturing these records for the sole purpose of making it appear that a particular appellant's name and "AWOL" status actually appeared on a contemporaneous agency record. (I have personally talked with one of the clerks involved). One of these clerks prepared Exhibit 3 for some of the ATCS appellants' MSPB agency record packets not knowing that another clerk had "phonied up" (my witnesses' words) Exhibit 2 for the same purpose. The FAA region, which prepared the agency records for filing with the MSPB, simply failed to cull out either Exhibit 2 or 3 and destroy it as they did with other such documents. These slipped through unnoticed and both Exhibits, which are obviously not copies of the same document, showed up in the MSPB packets for different appellants of the west hign area. (The FAA Region obtained a continuance to submit the agency record and the MSPB packets were not filed until Novemver 19, 1981).

I can, if you request, identify hundreds of completely manufactured records by Shewfelt. All of the sign-in logs for ATCS appellants from August 8, 1981 to September 20, 1981 were made up for litigation. All of the T and A reports (the official payroll record) were doctored from August 3 to September 20, 1981. The logs from August 3 to August 8 were either altered or manufactured, depending on the area and what the FAA needed the document to show. Swap book records and other key documents have been destroyed. Controllers who had legitimate leave (annual, sick leave, OWCP, etc.) which otherwise should have appeared on a sign-in log had the leave status striken after the fact by a stroke of pen, or a completely new document was produced to eliminate reference to the legal excuse for absence.

The first indication that I had of the massive scope of this illegal activity was in the spring of 1982. I had been contacted by some other attorneys who inquired as to whether I noticed some discrepancies in the agency documentation. I closely examined several files and some alterations became immediately apparent. Then I was retained by a Chicago Center controller named Richard Delutri.

Delutri was a controller who had been receiving treatment since 1980 for a chronic neck and shoulder problem. (This condition was later diagnosed as an intrameduliary spinal cord tumor). He aggravated the injury on August 2 and on August 3 called the center to report that he was taking medication which disqualified him from work. He told the man who answered the phone (identified as Mr. Woodbury) that he wanted to report for sick leave until August 8. He called his area supervisor at his home the evening of August 3rd, and left a message - a fact verified by the supervisor at the trial. When Delutri saw the sign-in log he noted there was no status for August 8, an indication that the agency would have recorded the sick leave on logs between August 3 and August 7. The logs showed only "AWOL". Delutri offered to take a lie dector test to prove his innocence. I agreed to let him do it and he passed. Ironically, at his trial, the agency representative, who was fully aware of the alteration of logs, convinced the Presiding Official (a RIFed lawyer from Department of Interior on her second trial) that if Delutri had called in it would have been recorded on the logs - the very same phony logs we can now prove are phony. Delutri's case did not go up to the full MSPB Board on appeal. He was so convinced that the initial MSPB decision was improperly influenced he ordered me to bypass the appeal and file directly with the Court of Appeals for the Federal Circtuit. His case is still in a suspense file in that court.

The first hard proof I obtained of the forged records was in the case of Alan Gerbitz. Alan hired me in June, 1982, and his file showed he was fired for absence on August 4 and August 5, which were days he was on approved annual leave. There was a memo in his file which was signed by his supervisor on July 31, 1981, and which, albeit ambiguous, appeared to confirm that Alan left the center on July 31 for seven annual leave days but simultaneously claimed to have cancelled his leave for August 3rd. Ironically, the agency log and T and A report both showed approved annual leave for August 3. The log for August 4, the first day Alan was charged with striking, was never produced - even in doctored form. The clerks who were preparing the phony logs under Robert Miller simply forgot to make one up for him on that day.

But the most crucial evidence in the Gerbitz case was the log for August 5, 1981. If Gerbitz had not been on approved annual leave he would have been scheduled for 11:00 p.m. on August 5. This would also have been his "deadline" shift. He was charged by a letter signed by George Gunter on August 5, but Gunter testified under oath on three different occasions that he left the facility and went home at 9:00 p.m. which was two hours before the 11:00 p.m. shift. The sign-in log produced by the agency in the Gerbitz file indicated that Alan was scheduled at 11:00 and was marked AWOL. However, the agency's own summary of oral reply proved this forgery. On August 19, 1981 at Alan's oral reply he pointed out to the hearing official that his name and status did not even appear on a sign-in log for August 5. The hearing official confirmed this fact and made a note of it for the record. The same document showed up in the MSPB packet on November 19 with the name Gerbitz and the status AWOL appearing on it.

I am attaching a copy of the MSPB Gerbitz decision (Exhibit 4). Note the Board's unequivocal findings (at 3) that "Appellant has demonstrated that the personnel sign-in logs were altered after his oral reply hearing..." The MSPB also found, impliedly, that the agency attorney and an agency official had suborned perjury (see p.2 n.1) by inducing the supervisor to change his testimony. Although the Board did not name these individuals, I can state from personal knowledge it was referring to Charles Prock (the same attorney who misrepresented the logs in Delutri) and Robert Miller (identified as "agency official" but acted as technical advisor), the same Robert Miller who now admits he was in charge of the project to manufacture evidence (he gratuitously refers to the procedure as "updating").

Having given you this background, I can anticipate your remaining questions:

(1) Was the practice of altering or manufacturing the time and attendance records pervasive? A. Yes.

(2) Can that be proved? A. Yes.

(3) Did the agency misrepresent the evidence? A. Yes, until they were caught.

(4) Was it material or critical evidence? A. In most cases it was the only evidence introduced in the agency's case in chief.

It is clear that the agency representatives wilfully endeavored to create an illusion that these sign-in logs and T and A reports were routine, contemporaneous records of official business entries. The altered or manufactured sign-in logs and T and A reports were accepted into the record without authentication because they were already filed as part of the "official agency record" pursuant to 5 C.F.R. 1201.25(4). The agency representative, Richard Shewfelt, stated on the cover sheet which transmitted the agency record to the Board that "..(p)art of the evidence relied upon by the agency is the daily facility sign-in logs." (See Exhibit 5). At the bottom Shewfelt certified "...that the above information is true and correct and copies of all materials are true copies." (id.)

This record was then used as the sole evidence in most Chicago Center cases, albeit it was coupled with still another illusion, i.e., the appearance of authentication.

There were seven consolidated trials involving controllers at the Chicago Center. Under a lead case decision of the MSPB (Schapansky v. FAA), all the agency needed to do to make a prima facie case is establish (1) unauthorized (2) absence (3) during a strike (4) at the controller's deadline. The Board then took official notice of the strike.

The game plan for the Chicago Center cases was to make the primary case by having the facility chief, George Gunter, create a belief that the agency record was a reliable business record and then, as to each individual case, Gunter would simply read from the record. The illusion was enhanced by a careful transition between "general" and "individual" testimony.

Thus Gunter would be asked, as part of the "general" case to define the purposes, use and procedures for a daily facility sign-in log. He would give a textbook answer which would show the logs were key timekeeping documents which were prepared daily from official posted watch schedules, etc. The agency representatives would carefully avoid asking Gunter whether the logs he was actually testifying from were actually prepared in the usual course of business. However, it was implied that they were. Then having set the illusion, Gunter would be asked if a particular controller was absent on a particular day and whether he was absent without authorization. In response to all of these questions, Gunter would pick up the individual MSPB file and respond without indicating that he had no personal knowledge and without putting on the record the fact that he was merely reading from the file of altered documents.

This strategy worked quite well for the agency through the first two consolidated hearings (Ristoff was in the first), but began to crumble after the third hearing, where absolute evidence of alteration was introduced (Gerbitz, supra).

The illusion totally collapsed in the fifth hearing, which involved approximately 200 controllers represented by Leighton & Conklin (Gary Kline). Attorney Kline had obtained, from one of his clients, copies of the logs as they existed on August 19, 1981, when the alterations were still in process. Kline's evidence was obtained legally (a contract oral reply official, William Marcks, who was an active alcoholic, allowed a PATCO representative to make copies), but the agency was unaware that Kline had them.

In the fifth consolidated trial (hereinafter Behensky), the agency started its case-in-chief with the same illusory testimony, using the generic-specific transition regarding the sign-in logs. But this effort to avoid direct perjury was tested early in the trial. I am attaching a copy of the transcript of the Behensky trial for your review and ask that you consider the following sections (Exhibit 6):

At p.64 (Agency case-in-chief)

Q. (Agency Rep. Weinkel) How did you verify that a person had missed their shift?

A. (Gunter) By the personnel sign-in log in each area. Person failing to sign in for his shift.

Q. And a personnel sign-in log, is that a document kept in the ordinary course of business at your facility?

A. Yes.

Mr. Kline's cross-examination at 98:

Q. Mr. Gunter, you stated that the records in the adverse action file are those which are kept in the regular course of business by the FAA, is that correct?

A. Yes.

Q. What did you mean by that?

A. (I was talking) about the posted watch schedule, personnel sign-in logs--

Q. I don't mean what records were you referring to. What did you mean by your statement that these records were kept in the regular course of business? What did that mean to you?

A. What it means that they're forms that we use every day. The T and A form for one.

Q. I'm sorry sir.

A. (That) included the T and A record.

Q. The forms that we're referring to that you use every day, they would be the T & A, correct?

A. Yes.

Q. The watch schedule, correct?

A. Yes.

Q. The sign-in logs is that correct?

A. Yes.

Q. And these are the records that we're talking about. Now how do they get filled out? How does a sign-in log get filled out? How does that work?

A. The personnel sign-in log?

Q. -- right,

A. The supervisor from the area would fill those out.

Q. And he'd do it either the night before or the next day before the shift so that people would know what area and what time they're assigned; is that correct? Is that the way it works?

A. Well, that would be for the signing in. The posted watch schedule is already posted.

Q. Right. So in other words, the way I understand it, is that a sign-in log would be filled out before a shift was started for the purpose of showing someone when he came in, where to work; is that accurate?

A. Yes.

Q. Now, is it your testimony that you did not put in the adverse action file documents specifically for the purpose of litigation? Is that your testimony?

A. I'm sorry, I don't understand your question.

Q. Well, did you take the sign-in logs or the watch schedule or the T and A and alter them to change them or correct them in order to support the removal that you had already taken? Did you do that?

A. No.

Q. Did anyone at your facility do that?

A. No. To the best of my knowledge. No.

Q. So you -- in looking at the adverse action file that I have, these are the actual operating records of the facility for the various individuals; correct?

A. Yes.

Q. And the sign-in logs for a particular day, for a particular crew is going to be the same for every person who is listed on that piece of paper, isn't that right?

NORTH WING
PERSONNEL LOG

DATE 8-3-81

SHIFT 07-15

SIGNATURE	INITIALS	ON	OFF	DUTIES	HOURS ON DUTY	HOURS ON LEAVE
Adair				AREA SUPERVISOR		
				TEAM SUPERVISOR		
				TEAM SUPERVISOR		
C Snow				~~DJA - NE~~ 050		8AWOL
C Marszalek				051		8AWOL
Grow				051/H		8AWOL
Rohlfing				~~DJA - NER~~ 050H		8AWOL
Daniel				D7 - GRB		[illegible]
Riley						[illegible]
Larson						8AWOL
Collins				C10A - GRB		8AWOL
				B24 - 27		
				Study		
				Study		
				Study		
				A/L S/L O/B		
Mark	—	—	—	—	[illegible]	8 A/L
~~[illegible]~~	—	—	—	—	—	8 A/L

EXHIBIT 17 (cont.)

10

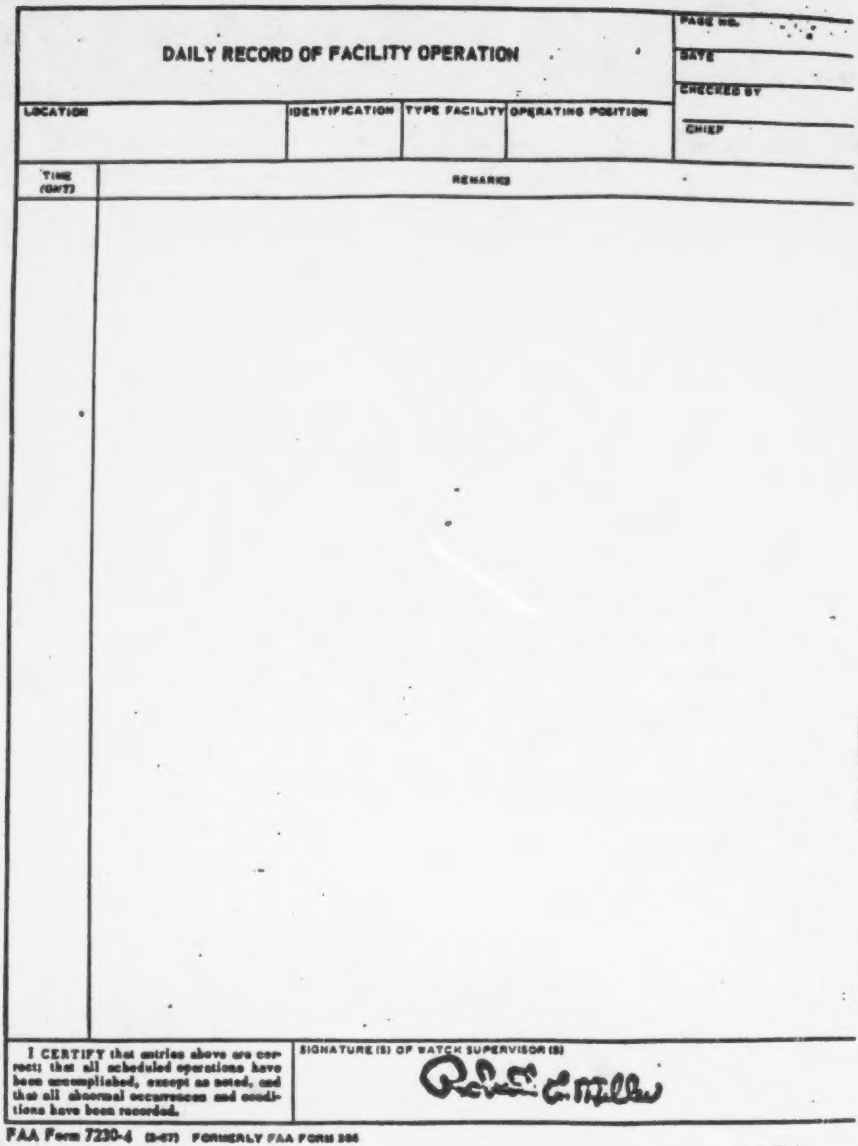
NORTH WING
PERSONNEL LOG

DATE 8-3-81

SHIFT 07-15

SIGNATURE	INITIALS	ON	OFF	DUTIES	HOURS ON DUTY	HOURS ON LEAVE
Adair				AREA SUPERVISOR		
				TEAM SUPERVISOR		
				TEAM SUPERVISOR		
6 Snow				[illegible] D50		8AWOL
6 Marszalek				D51		8AWOL
Grow				D51/H		8AWOL
Rahlfing				~~D3A — [illegible]~~ D50H		8AWOL
Daniel				D7 — GRB		[illegible]
Riley						[illegible]
Larson						8AWOL
Collins				C10A - GRB		8AWOL
				B24 - 27		
				Study		
				Study		
				Study		
				A/L S/L O/B		
Mark	—	—	—	—	[illegible]	8 A/L
~~Jorgensen~~	/	/	/	—	/	8 A/L

EXHIBIT 18



DAILY RECORD OF FACILITY OPERATION

PAGE NO.
DATE
CHECKED BY
CHIEF

LOCATION	IDENTIFICATION	TYPE FACILITY	OPERATING POSITION

TIME (GMT)	REMARKS

I CERTIFY that entries above are correct; that all scheduled operations have been accomplished, except as noted, and that all abnormal occurrences and conditions have been recorded.	SIGNATURE(S) OF WATCH SUPERVISOR(S) Robert C. Miller

FAA Form 7230-4 (3-67) FORMERLY FAA FORM 386

1 0176

— EXHIBIT 18 (cont.) —

August 28, 1981

MEMO FOR RECORD

On Sunday, August 2, 1981, I worked a "12" shift. At approximately 1520Z I attempted to call the following individuals with the following results:

R. Becker - No answer

J. Hess - No answer

★ J. Kwanski- Talked to his wife, told her to have him call in on 8/3/81. She said he was fishing and couldn't be reached.

Hehr - I notified him while on shift and I believe it was Saturday or Sunday before the strike.

Rasmussen - no contact.

Wayne Winslow

Wayne Winslow
#3 EH Acting Team Supervisor

- EXHIBIT 19 -

August 27, 1981

[redacted],

J. L. Iwanski was on annual leave during the week of August 3, 1981.

On Saturday, August 1, 1981, I was on the 3 - 11 shift, and attempted to call Iwanski toward the end of the shift. He was on the list of people to be contacted.

Approxiamtely 8:30 p.m. August 1, 1981, I called and talked to his wife. She said he was out. I asked her to have Iwanski call the East High Area on the next day August2, 1981. On Sunday, August 2, 1981, I was on the 3 - 11 shift and still had the list of people to be called. No marking other than mine appeared after Iwanski's name.

I attempted to call him again at approximately 8:42 p.m. and was unsuccessful. on 8/2/81. I never did make contact prior to August 3, 1981.

No further contact or attempt was made by me.

Adolph Salinas Jr.
A. Salinas, Jr.
#2 EH Team Supervisor

- EXHIBIT 19 (cont.) -

August 29, 1981

MEMO FOR RECORD

Francis Broich advised he talked to L. E. Rasmussen on the Friday prior to the strike and told him to call in on Monday August 3rd.

L. E. Rasmussen was observed on the picket line by Team Supervisor Bronson and Winslow.

Team Supervisors Bronson, Fisher, Carter and Winslow stated they observed [redacted], T. Hehr, R. Becker and J. Hess on the picket line.

Edmund R. Froelich

Ed. Froelich

- EXHIBIT 19 (cont.) -

CUNNINGHAM AND WOOD

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April 17, 1984

Linda Wawzenski, Esq.
Assistant U.S. Attorney
219 South Dearborn Street
14th Floor
Chicago, Illinois 60604

RE: Ristoff v. FAA, 83 C 7941
Document Alteration Issue

Dear Ms. Wawzenski:

Pursuant to our recent discussions on the above issues, I am attaching copies of some of the key documents and MSPB decisions relating to the massive falsification of government records at the Chicago ARTCC. My own investigation is limited to what I was able to discover in prior MSPB litigation and other evidence which has been turned over to me by other attorneys.

Before going into specific examples of alterations, I think it would be appropriate to describe the timekeeping procedures used by the Chicago Center prior to August 3, 1981.

There are three basic timekeeping documents used by the FAA: a "watch-schedule"; a "daily facility sign-in log"; and the Time and Attendance report. The watch schedule is "posted" (meaning locked-in) 21 days in advance. Changes in the watch schedule would appear in either "swap books" or directly on the schedule by cross-off and supervisor's initials. The working watch schedule, with approved changes, was what was used by the team supervisors to prepare the daily facility sign-in logs. This was usually prepared the day before the shift so as to assure that changes on the watch schedule showed up on the sign-in logs. The sign-in log served a dual function in that it documented assignments of particular controllers to partricular sectors and jobs (e.g., radar, manual or "A" side). The sign-in log is a two-sided form with the reverse side having a section to document incidents or record changes in assignments made in mid-shift and, at the bottom, a certification clause calling for the supervisor's signature.

– EXHIBIT 20 –

When controllers reported for duty they would sign their names adjacent to the printed name, intial the adjacent column and record their on-duty and off-duty time.

At the end of a shift, the supervisor would use the sign-in log to transpose the duty hours or leave (or AWOL) to the time and attendance report. The T and A report was the document forwarded to Kansas City for payroll purposes.

Beginning August 3, 1981, the timekeeping at the Chicago Center was understandably thrust into chaos. The supervisors were needed to work air traffic control duties and could no longer perform their function in preparing and maintaining these records. The daily facility sign-in logs had been prepared for use on August 3, 1981 on the day before. However, only some sign-in logs were prepared for August 4th and fewer still for the 5th and 6th. Even the sign-in logs which were prepared were not actually used for timekeeping purposes. They were made unreliable because the personnel department needed the watch schedules to prepare the adverse action letters in volume. Testimony from Richard Pender, who was then the Personnel Director at Chicago Center, confirmed that he removed the watch schedules from the areas for purposes of preparing the proposed removal letters (filling in the blanks for the scheduled shift). I recently called Mr. Pender to verify what he used to prepare the letters and he confirmed that the watch schedule only was used and not the sign-in logs which later appeared in evidence with the "AWOL" alterations on them. (Pender now works with the Veterans Administration, having left the Center in September, 1981).

As I am sure you are aware from the deposition of Junior Bartels and LeRoy Halle, supervisors were not even asked if an employee was excused or AWOL and there is abundant evidence that the "AWOL" which later appeared on the questionable sign-in logs in the MSPB packets, was placed on these records by personnel under the direction of Robert Miller. Miller was an Evaluations Officer at the time of the PATCO job action but was assigned specific duties with respect to the adverse-action files. One of these duties was to make it appear as if the agency sign-in logs had been maintained in the usual and ordinary course of business.

In order to demonstrate what actually formed the basis of the Chicago Center's timekeeping -- post August 3rd, I am attaching a copy of the genuine document used to record time on August 4, 1981. (Exhibit 1). The FAA is not aware that we are in possession of this document, and I do not want them aware of it at this time. If Exhibit 1 is compared with Exhibit 2, you see 2 sign-in logs for "west high". Exhibit 1 is the document which was actually used to record time and attendance for "west high" for August 4, 1981. Exhibit 2 is one of the partially altered documents (the printed names below "Byrd" and "AWOL" were added later by persons unknown). Exhibit 2 appeared in the MSPB packets of some ATCS appellants as the "business record" of the agency to show absence. Exhibit 2 was not the record used to record time and attendance for "west high", but was certified as a true copy of the record by Richard Shewfelt, the agency representative. Exhibit 3 is particularly conclusive evidence of the outright manufacture of a record. Note that Exhibit 3 is still another version of the same "west high" area for the same personnel for the same shift on August 4, 1981. Apparently, there were several clerks, working under Robert Miller's direction, who were manufacturing these records for the sole purpose of making it appear that a particular appellant's name and "AWOL" status actually appeared on a contemporaneous agency record. (I have personally talked with one of the clerks involved). One of these clerks prepared Exhibit 3 for some of the ATCS appellants' MSPB agency record packets not knowing that another clerk had "phonied up" (my witnesses' words) Exhibit 2 for the same purpose. The FAA region, which prepared the agency records for filing with the MSPB, simply failed to cull out either Exhibit 2 or 3 and destroy it as they did with other such documents. These slipped through unnoticed and both Exhibits, which are obviously not copies of the same document, showed up in the MSPB packets for different appellants of the west hign area. (The FAA Region obtained a continuance to submit the agency record and the MSPB packets were not filed until Novemver 19, 1981).

I can, if you request, identify hundreds of completely manufactured records by Shewfelt. All of the sign-in logs for ATCS appellants from August 8, 1981 to September 20, 1981 were made up for litigation. All of the T and A reports (the official payroll record) were doctored from August 3 to September 20, 1981. The logs from August 3 to August 8 were either altered or manufactured, depending on the area and what the FAA needed the document to show. Swap book records and other key documents have been destroyed. Controllers who had legitimate leave (annual, sick leave, OWCP, etc.) which otherwise should have appeared on a sign-in log had the leave status striken after the fact by a stroke of pen, or a completely new document was produced to eliminate reference to the legal excuse for absence.

The first indication that I had of the massive scope of this illegal activity was in the spring of 1982. I had been contacted by some other attorneys who inquired as to whether I noticed some discrepancies in the agency documentation. I closely examined several files and some alterations became immediately apparent. Then I was retained by a Chicago Center controller named Richard Delutri.

Delutri was a controller who had been receiving treatment since 1980 for a chronic neck and shoulder problem. (This condition was later diagnosed as an intrameduliary spinal cord tumor). He aggravated the injury on August 2 and on August 3 called the center to report that he was taking medication which disqualified him from work. He told the man who answered the phone (identified as Mr. Woodbury) that he wanted to report for sick leave until August 8. He called his area supervisor at his home the evening of August 3rd, and left a message - a fact verified by the supervisor at the trial. When Delutri saw the sign-in log he noted there was no status for August 8, an indication that the agency would have recorded the sick leave on logs between August 3 and August 7. The logs showed only "AWOL". Delutri offered to take a lie dector test to prove his innocence. I agreed to let him do it and he passed. Ironically, at his trial, the agency representative, who was fully aware of the alteration of logs, convinced the Presiding Official (a RIFed lawyer from Department of Interior on her second trial) that if Delutri had called in it would have been recorded on the logs - the very same phony logs we can now prove are phony. Delutri's case did not go up to the full MSPB Board on appeal. He was so convinced that the initial MSPB decision was improperly influenced he ordered me to bypass the appeal and file directly with the Court of Appeals for the Federal Circtuit. His case is still in a suspense file in that court.

The first hard proof I obtained of the forged records was in the case of Alan Gerbitz. Alan hired me in June, 1982, and his file showed he was fired for absence on August 4 and August 5, which were days he was on approved annual leave. There was a memo in his file which was signed by his supervisor on July 31, 1981, and which, albeit ambiguous, appeared to confirm that Alan left the center on July 31 for seven annual leave days but simultaneously claimed to have cancelled his leave for August 3rd. Ironically, the agency log and T and A report both showed approved annual leave for August 3. The log for August 4, the first day Alan was charged with striking, was never produced - even in doctored form. The clerks who were preparing the phony logs under Robert Miller simply forgot to make one up for him on that day.

But the most crucial evidence in the Gerbitz case was the log for August 5, 1981. If Gerbitz had not been on approved annual leave he would have been scheduled for 11:00 p.m. on August 5. This would also have been his "deadline" shift. He was charged by a letter signed by George Gunter on August 5, but Gunter testified under oath on three different occasions that he left the facility and went home at 9:00 p.m. which was two hours before the 11:00 p.m. shift. The sign-in log produced by the agency in the Gerbitz file indicated that Alan was scheduled at 11:00 and was marked AWOL. However, the agency's own summary of oral reply proved this forgery. On August 19, 1981 at Alan's oral reply he pointed out to the hearing official that his name and status did not even appear on a sign-in log for August 5. The hearing official confirmed this fact and made a note of it for the record. The same document showed up in the MSPB packet on November 19 with the name Gerbitz and the status AWOL appearing on it.

I am attaching a copy of the MSPB Gerbitz decision (Exhibit 4). Note the Board's unequivocal findings (at 3) that "Appellant has demonstrated that the personnel sign-in logs were altered after his oral reply hearing..." The MSPB also found, impliedly, that the agency attorney and an agency official had suborned perjury (see p.2 n.1) by inducing the supervisor to change his testimony. Although the Board did not name these individuals, I can state from personal knowledge it was referring to Charles Prock (the same attorney who misrepresented the logs in Delutri) and Robert Miller (identified as "agency official" but acted as technical advisor), the same Robert Miller who now admits he was in charge of the project to manufacture evidence (he gratuitously refers to the procedure as "updating").

Having given you this background, I can anticipate your remaining questions:

(1) Was the practice of altering or manufacturing the time and attendance records pervasive? A. Yes.

(2) Can that be proved? A. Yes.

(3) Did the agency misrepresent the evidence? A. Yes, until they were caught.

(4) Was it material or critical evidence? A. In most cases it was the only evidence introduced in the agency's case in chief.

It is clear that the agency representatives wilfully endeavored to create an illusion that these sign-in logs and T and A reports were routine, contemporaneous records of official business entries. The altered or manufactured sign-in logs and T and A reports were accepted into the record without authentication because they were already filed as part of the "official agency record" pursuant to 5 C.F.R. 1201.25(4). The agency representative, Richard Shewfelt, stated on the cover sheet which transmitted the agency record to the Board that "..(p)art of the evidence relied upon by the agency is the daily facility sign-in logs." (See Exhibit 5). At the bottom Shewfelt certified "...that the above information is true and correct and copies of all materials are true copies." (id.)

This record was then used as the sole evidence in most Chicago Center cases, albeit it was coupled with still another illusion, i.e., the appearance of authentication.

There were seven consolidated trials involving controllers at the Chicago Center. Under a lead case decision of the MSPB (Schapansky v. FAA), all the agency needed to do to make a prima facie case is establish (1) unauthorized (2) absence (3) during a strike (4) at the controller's deadline. The Board then took official notice of the strike.

The game plan for the Chicago Center cases was to make the primary case by having the facility chief, George Gunter, create a belief that the agency record was a reliable business record and then, as to each individual case, Gunter would simply read from the record. The illusion was enhanced by a careful transition between "general" and "individual" testimony.

Thus Gunter would be asked, as part of the "general" case to define the purposes, use and procedures for a daily facility sign-in log. He would give a textbook answer which would show the logs were key timekeeping documents which were prepared daily from official posted watch schedules, etc. The agency representatives would carefully avoid asking Gunter whether the logs he was actually testifying from were actually prepared in the usual course of business. However, it was implied that they were. Then having set the illusion, Gunter would be asked if a particular controller was absent on a particular day and whether he was absent without authorization. In response to all of these questions, Gunter would pick up the individual MSPB file and respond without indicating that he had no personal knowledge and without putting on the record the fact that he was merely reading from the file of altered documents.

This strategy worked quite well for the agency through the first two consolidated hearings (Ristoff was in the first), but began to crumble after the third hearing, where absolute evidence of alteration was introduced (Gerbitz, supra).

The illusion totally collapsed in the fifth hearing, which involved approximately 200 controllers represented by Leighton & Conklin (Gary Kline). Attorney Kline had obtained, from one of his clients, copies of the logs as they existed on August 19, 1981, when the alterations were still in process. Kline's evidence was obtained legally (a contract oral reply official, William Marcks, who was an active alcoholic, allowed a PATCO representative to make copies), but the agency was unaware that Kline had them.

In the fifth consolidated trial (hereinafter Behensky), the agency started its case-in-chief with the same illusory testimony, using the generic-specific transition regarding the sign-in logs. But this effort to avoid direct perjury was tested early in the trial. I am attaching a copy of the transcript of the Behensky trial for your review and ask that you consider the following sections (Exhibit 6):

At p.64 (Agency case-in-chief)

Q. (Agency Rep. Weinkel) How did you verify that a person had missed their shift?

A. (Gunter) By the personnel sign-in log in each area. Person failing to sign in for his shift.

Q. And a personnel sign-in log, is that a document kept in the ordinary course of business at your facility?

A. Yes.

Mr. Kline's cross-examination at 98:

Q. Mr. Gunter, you stated that the records in the adverse action file are those which are kept in the regular course of business by the FAA, is that correct?

A. Yes.

Q. What did you mean by that?

A. (I was talking) about the posted watch schedule, personnel sign-in logs--

Q. I don't mean what records were you referring to. What did you mean by your statement that these records were kept in the regular course of business? What did that mean to you?

A. What it means that they're forms that we use every day. The T and A form for one.

Q. I'm sorry sir.

A. (That) included the T and A record.

Q. The forms that we're referring to that you use every day, they would be the T & A, correct?

A. Yes.

Q. The watch schedule, correct?

A. Yes.

Q. The sign-in logs is that correct?

A. Yes.

Q. And these are the records that we're talking about. Now how do they get filled out? How does a sign-in log get filled out? How does that work?

A. The personnel sign-in log?

Q. -- right,

A. The supervisor from the area would fill those out.

Q. And he'd do it either the night before or the next day before the shift so that people would know what area and what time they're assigned; is that correct? Is that the way it works?

A. Well, that would be for the signing in. The posted watch schedule is already posted.

Q. Right. So in other words, the way I understand it, is that a sign-in log would be filled out before a shift was started for the purpose of showing someone when he came in, where to work; is that accurate?

A. Yes.

Q. Now, is it your testimony that you did not put in the adverse action file documents specifically for the purpose of litigation? Is that your testimony?

A. I'm sorry, I don't understand your question.

Q. Well, did you take the sign-in logs or the watch schedule or the T and A and alter them to change them or correct them in order to support the removal that you had already taken? Did you do that?

A. No.

Q. Did anyone at your facility do that?

A. No. To the best of my knowledge. No.

Q. So you -- in looking at the adverse action file that I have, these are the actual operating records of the facility for the various individuals; correct?

A. Yes.

Q. And the sign-in logs for a particular day, for a particular crew is going to be the same for every person who is listed on that piece of paper, isn't that right?

A. Yes.

Q. There wouldn't be different documents in different files. You wouldn't have changed them to make the FAA look good, would you?

A. No.

Throughout this testimony Robert Miller was seated next to the agency attorney as the technical representative. (The same Miller referred to in footnote 1 of the Gerbitz decision, Exnibit 4). Miller did not testify in Benensky because of a sequestration order. But I called him as a witness in the last Chicago consolidation and attach that transcript as Exhibit 7. Compare the following testimony with Mr. Kline's examination of George Gunter:

Miller, 1-3-83 at p.1753:

Q. ...Mr. Miller at the time of the so-called job action in August of 1981, your title was evaluations officer, is that correct?

A. Correct.

Q. Would you describe what duties you had insofar as the processing of the adverse action with the air traffic controllers who were charged with striking?

A. I was working in what we called the war room, where we were processing the recommendations received from the hearing officials, and we had other functions. Mr. Gunter used it as a room where he worked away from the operations center.

Q. What other functions would you be referring to, for the record?

A. I don't --

Q. (Interrupting) You said you had some other functions but you didn't say what functions you were referring to.

A. Within the room, are you saying?

Q. With respect to the adverse action.

A. Well, at the times the chief was gone I was acting chief. There were times when the chief and the deputy were gone, they were in hearings in Chicago and Washington on temporary restraining orders and decertifications and so forth. Do you want me to describe all the things I did?

Q. Yes.

A. That will take about six hours. If you've got that kind of time I can go through day by day what I did.

Q. I'll tell you when to stop.

*

A. (Continuing) I ran the facility. I was staff officer and had varied duties. At times I was up on the platform during the first few days of the strike, and when the chief and deputy were gone in court I was acting chief some of the days. We set up the hearing locations and hearing officers and logistics on the handling of paperwork and, in general, the administrative functions for the facility.

* * *

Q. Did you have a role in collecting or producing the documentation which affected the adverse action?

A. All the facility officers did.

Q. Did you have any role insofar as producing or reproducing documents such as sign-in logs?

A. Yes. I had charge of the logistics of supplying the needs of hearing officials which included sign-in logs and schedules and the lists, the Title 5 listings and so forth. That is part of what I was doing.

Q. Subsequent to the oral hearings, did you have a function with respect to making up the documentation necessary for the MSPB packet on the appeals?

A. Yes.

Q. As part of that function, were you required to amend documents that had previously been furnished to the appellants?

A. Yes, we went through and amended the T and A's. We did supply the amended documents, yes.

Q. Were the T and A's the only documents that you amended, Mr. Miller?

A. No, we had the 7230-4's.

Q. (Interrupting) Would you state for the records what that is?

A. The sign-in log.

Q. How were these amended?

A. Logistically we couldn't keep track of everyone every day. We didn't have the personnel up on the platform to do it, they were missing or were not there or did not show up for work and that function was done in the administrative office after the fact.

* * *

Q. (p.1760) ... Is my understanding correct that you did not have the manpower to maintain these documents in the ordinary course of business as you would have maintained them before the job action?

A. That's correct.

Q. And that they were neglected for some time and they had to be updated and then corrected?

A. Yes. Amended.

Q. And is it not a fact that, at least for some tours of duty, the mids among others, there was a single sign-in log at the front of the facility for controller who reported to duty as opposed to --

A. (Interrupting) That's corect. We did have a single sign-in log for the mids that was kept at the watch desk.

Q. But, nevertheless, sometime after the oral hearings you prepared a sign-in log to make it appear that there were, in fact, sign-in logs for -- correct me if I'm wrong.

A. You are wrong. It was not after the oral hearings. The sign-in logs were made up for the first week and a half ahead of time, but none of the changes were reflected in them. Then, the sign-in logs after that, we maintained the 7230-4 in the administrative office for the people that had not shown up for work the first week.

After the first week they were not taken up on the platform any longer. We kept them downstairs and, in fact, the office I was in was where we were keeping them.

Q. Now, these documents had to be corrected, though?

A. Yes.

Q. Because there were times when you showed 21 controllers on a particular tour when there were only 15 assigned to that tour, isn't that true?

A. That's probably true, yes. I don't know the exact numbers, but we did not have the original schedules that were located up in the areas down in the room when we first started correcting the reports. As they would come down the week they were finished, we would bring them down. I would say the first three to four weeks we had schedules coming down each week that required going back and correcting the assignment sheets.

Q. O.K., but the treatment that these documents were given was different from that ordinarily given these documents?

A. That's correct.

Q. So it was not an ordinary document maintained in the ordinary course of business.

A. That's correct.

*

Of course, Miller's testimony, albeit as evasive as he could make it, clearly shows that Gunter's testimony at the Behensky hearing (and earlier hearing) was perjured and culpable for filing false statements. See 18 U.S.C. Section 1001.

Placed in the context of what we can prove from other documents and sources, Miller was admitting that (a) all of the documents in the MSPB files for controllers for dates subsquent to August 8, 1981, were completely manufactured for purpose of litigation; (b) the documentation between August 3 and August 7 existed but was altered wherever needed to support a charge. He denied that some of the evidence was not even in existence between August 3 and August 7 but as you can see from Exhibits 1, 2 and 3, Miller was lying about that too.

In reviewing the transcripts, please keep in mind that the reason Miller was compelled to admit the alterations was that he was present when Mr. Kline introduced Exhibit 16 of the Behensky hearing, where no less than 109 alterations were proved. According to the witness I talked to and who worked on the documents under Miller's direction, Miller was fully aware the records were being "phonied up" at the time he was engaging in the alteration activity.

I am attaching a copy of the MSPB Behensky decision which has remanded the Chicago Center cases. (Exhibit 8).

Exhibit 9 is the oral reply summary of Brenda Conroy, one of my clients. This was one of the hearings where the alterations-in-process were first noted. Conroy's name was brought up in the Behensky transcript (p.112) where it was shown her name had been added to a log after this oral reply.

Exhibit 10 (Group) is an example of actual sign-in logs for the North Wing in August and September, 1981. These were not the documents which appeared in the MSPB files.

Exhibit 11 (Group) are the logs introduced by Kline as Exhibit 16 in Behensky. These documents proved alterations were made after August 19, 1981, but were in an altered state already when they were copied.

Finally, I would like to state the significance of the foregoing to Ristoff. As you are aware, Ristoff claimed, but his supervisor Junior Bartels refused to corroborate, that he had reported for sick leave for the week of August 3. Bartels admitted at his deposition that he now recalls that Ristoff did request the leave. If Bartels entered the "SL" on the log, it is quite possible that Ristoff's log has been altered to delete it.

In this regard, I can obtain the affidavit of another controller who was fired for striking while he was on vacation in Minnesota. The contoller is Pete Nyquist. The log for Nyquist for August 3rd had the "AL" designation but was later altered to show AWOL. Nyquist's case was not heard by the MSPB because he was dissuaded from taking the appeal by the agency's appeal advice. (I am considering appropriate action in this regard). But to relate the Nyquist case to Ristoff's, Mr. Nyquist attempted to discuss his case with high ranking officials of the FAA last summer. They could not explain to him why he had been fired while he was on approved annual leave and 400 miles away from the scene. Finally, a management official told Pete that the agency had a "memo" in the file signed by Junior Bartels. The memo purports that Bartels called Pete on July 31, 1981 and cancelled his leave. Pete can prove that Bartels could not have called him because he was in the north woods (with witnesses) on that day and was miles away from any telephones. Quite simply, Bartels was lying about Nyquist as he obviously lied about

Ristoff at Ristoff's MSPB hearing.

I could go on for light years about the conduct of certain FAA officials in the Chicago Center cases. I have never witnessed such rampant perjury, cover-up, and evidence tampering in my life. I know that the Department of Justice is concerned about the erosion of ethics in the Judicial system as evident from the Greylord indictments. But just as it would be no defense for a judge who took a bribe to say that he would have ruled the way he did even without the gratuity, it seems that the FAA official's belief that they were facilitating the removal of people they considered strikers does not excuse the conduct engaged in here. Indeed if it is permitted then the entire system will be infected.

The realities of the matter are that bureaucrats who "cooperate" in conspiracies such as this often do receive better jobs as a reward for making the agency administration look good. This may be a more subtle form of bribery, but it is still something that must be condemned.

Before I attended law school, I was a police officer and I received several commendations for drug arrests. Early on in that career I was exposed to other officers who wanted to make detective by getting the big bust, even if it meant planting drugs on individuals targeted as known drug dealers. I could not go along with that program and reconcile my role as a protector. After meeting with you, I am convinced that you have the same values. I am confident you will give this matter your serious attention and will take the action you deem appropriate.

If I can amplify or clarify any of the evidence submitted, please do not hesitate to contact me.

Very truly yours,

CUNNINGHAM AND WOOD

Phillip S. Wood
Attorney at Law

PSW:kf
Encls.

U.S. Department of Justice

United States Attorney
Northern District of Illinois

LAW:mrc
#83,22493

United States Courthouse
Chicago, Illinois 60604

June 4, 1984

Carl Schellenburg, Regional Counsel
FEDERAL AVIATION ADMINISTRATION
2300 East Devon Avenue
Des Plaines, Illinois 60018

Re: George J. Ristoff v. United States of America,
et al.
No. 83 C 7941 - USDC ND of Illinois ED

Dear Mr. Schellenburg:

Enclosed please find a copy of a letter dated June 4th addressed to Mr. John E. Murdock of the Washington Federal Aviation Administration, with attachments. I was informed Thursday by the Postal Service that they were unable to deliver the two packages we sent due to improper labeling.

I apologize for the delay in transmitting this information to you. If you should have any questions, please call.

Very truly yours,

DAN K. WEBB
United States Attorney

BY: Linda A. Wawzenski

LINDA A. WAWZENSKI
Assistant United States Attorney
Telephone: (312) 353-1983

Enclosures

EXHIBIT 21

U.S. Department of Justice

United States Attorney
Northern District of Illinois

LAW:ffp
#83,22493

United States Courthouse
Chicago, Illinois 60604

EXPRESS MAIL

June 4, 1984

CONFIDENTIAL

Mr. John E. Murdock, III
Chief Counsel
Federal Aviation Administration
Washington, D. C. 20591

Re: George J. Ristoff v. United States, et al.
No. 83 C 7941 USDC ND Ill. ED

Dear Mr. Murdock:

We are enclosing for your review and possible action a letter with various exhibits submitted to this office by Phillip S. Wood, attorney for plaintiff in the above-captioned cause.

Mr. Wood, who represents many former controllers from the Chicago Air Route Traffic Control Center, alleges that there was widespread falsification of various time and attendance records at the Center during the 1981 strike. He also contends that the fabricated documents, along with testimony, were improperly used in many MSPB hearings as the sole basis for the F.A.A's prima facie case. In conjunction with his charges, Mr. Wood suggests that we read U. S. v. Moss American, Inc., 78 FRD 214 (E.D. Wis. 1978).

Because of his allegations of perjury, the undersigned Assistant, along with James T. Hynes, Chief of the Civil Division, has spent considerable time reviewing Mr. Wood's submission. It is our conclusion that there is no action to be taken in this matter by the U. S. Attorney's office. We do believe that this material should be forwarded to you for your review.

EXHIBIT 21 (cont.)

We also understand that the 70 cases remanded for new hearing by the MSPB because of document discrepancies are scheduled to be heard on July 9, 1984. We believe that Mr. Wood represents several former controllers in the remand batch.

If you have any questions on this material, please call the undersigned Assistant at FTS 353-1983.

Very truly yours,

DAN K. WEBB
United States Attorney

BY:
LINDA A. WAWZENSKI
Assistant United States Attorney

Enclosures

cc: (w/encls.)

Carl Schellenburg
Regional Counsel
Federal Aviation Administration
2300 East Devon Avenue
Des Plaines, Illinois 60018

EXHIBIT 21 (cont.)

U.S. Department of Justice

Office of Professional Responsibility

Washington, D.C. 20530

JUL 6 1987

Chairman James L. Oberstar
Subcommittee on Investigations and Oversight
Committee on Public Works and Transportation
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The purpose of this letter is to report the results of our inquiry into certain concerns you raised in a letter to me, dated October 3, 1986, and in subsequent communications between your staff and attorneys in this Office. You related that during the course of your subcommittees's investigation into certain questionable actions taken by Federal Aviation Administration officials at the Chicago ARTCC during the 1981 PATCO strike, you reviewed subpoenaed FAA documents that included correspondence to the FAA from Linda A. Wawzenski, an Assistant United States Attorney in Chicago, who was defending the FAA in a PATCO strike related civil suit captioned, George J. Ristoff v. United States of America. Ms. Wawzenski's correspondence consisted of a cover letter, dated June 4, 1984, to the FAA's Chief Counsel (with a carbon copy to the Des Plaines, Illinois, Regional Counsel) and an April 17, 1984 letter Ms. Wawzenski had received from Mr. Phillip S. Wood, her opposing counsel in the Ristoff case. In that April 17, 1984 letter to Ms. Wawzenski, which included exhibits purporting to be different versions of the same documents, Mr. Wood alleged that certain FAA time and attendance records had been introduced as "ordinary course of business" records at several Merit System Protection Board hearings involving air traffic controllers who had been fired for being AWOL, when, in fact, they had been prepared later than usual by supervisors who, because of their added duties during the strike, had been too busy to prepare them contemporaneously, or they had been prepared specifically in anticipation of litigation. Mr. Woods also claimed in that letter that one FAA official, in attempting to make use of the documents at one MSPB hearing, had committed perjury. At one point in Mr. Wood's letter to Ms. Wawzenski, Mr. Woods stated, "The FAA is not aware that we are in possession of this document, and I do not want them aware of it at this time." In her cover letter to the FAA's Chief Counsel, in which she referenced the Ristoff case, Ms. Wawzenski stated that she was submitting the Wood correspondence for "review and

— EXHIBIT 22 —

possible action." Ms. Wawzenski also stated in the letter that she and the Chief of the U.S. Attorney's Civil Division had spent considerable time reviewing Mr. Wood's submission and had concluded that there was no action to be taken by the U.S. Attorney.

Our inquiry focused on whether it was appropriate for the U.S. Attorney in Chicago to review Mr. Wood's allegations of possible criminal conduct, and whether it was proper for Ms. Wawzenski to later forward the allegations and accompanying documentation to the FAA. The following is a summary of our findings and conclusions.

The Ristoff case was filed on October 28, 1983. During the time that discovery in the case was taking place, Mr. Wood raised the allegations of document falsification and perjury orally with Ms. Wawzenski. On March 30, 1984, a meeting was held among Mr. Wood, Ms. Wawzenski, and her supervisor, James. T. Hynes, Chief of the U.S. Attorney's Civil Division. Mr. Wood's allegations, which were generally already known by the FAA, were specifically discussed at that meeting. Ms. Wawzenski also stated during the meeting that the allegations would most likely be given to the Criminal Division of the U.S. Attorney's office for review. Shortly after that meeting, District Judge John F. Grady, to whom Ristoff had been assigned, was apprised of the allegations. He determined that further discovery would be suspended until the allegations were reviewed for possible criminal action. It is unclear whether the Wood-Wawzenski-Hynes meeting and the subsequent notification of Judge Grady took place before or after Mr. Wood sent his April 17 letter. Mr. Wood thinks the letter was sent before the meetings, but has no clear recollection of the chronology. Ms. Wawzenski is certain of the date of the March 30 meeting and subsequent meeting with Judge Grady. It would appear that the April 17 letter, which states that it is "[p]ursuant to our recent discussions on the (document alteration) issues," arrived after those meetings. In any event, contrary to the implication contained in Ms. Wawzenski's letter of June 4, 1984 to the FAA's Chief Counsel, after a preliminary review by Ms. Wawzenski and Mr. Hynes, the documents supplied by Mr. Wood were in fact sent to the Criminal Division of the U.S. Attorney's office for its review. It was that Division, not Ms. Wawzenski and Mr. Hynes, that determined that prosecutive action was not warranted. At the conclusion of its review, the Division suggested that the material be forwarded to the FAA for possible administrative action. (It also appears that another review of the April 17 material and an initial review of additional documentation supplied by Mr. Wood took place in July 1984, after Ms. Wawzenski had acted upon the initial Criminal Division recommendation by forwarding the April 17 material to the FAA. The second review resulted in the same determination; there was no prosecutive merit, but the matter should be addressed administratively. At the conclusion of the second review, however, the attorney in the Criminal Division conducting the review specifically recommended that the material be sent to the Inspector General at the Department of Transportation.)

Ms. Wawzenski told us that she forwarded the April 17 material to the FAA in response to the recommendation of the Criminal Division and not to assist her client in preparing for the Ristoff litigation or in the seventy cases remanded by the MSPB for new hearings to take place in July, 1984. Ms. Wawzenski also told us that although she was aware that Mr. Wood had requested that the information he was providing not be disclosed to the FAA, the FAA was already aware that Mr. Wood was claiming falsification of time and attendance records as a central facet of his several cases; she never promised that she would not disclose the information; she in fact had told him that once the information had been reviewed for prosecutive merit it would be disclosed to the FAA; and, she felt an obligation to make the existence of his information known to the FAA. Mr. Wood told us that Ms. Wawzenski made no promise to him to keep the material confidential. He does believe, however, that she had some obligation not to show the material to the FAA without talking to him first. He also recalls telling her that he did not want the FAA to see the material until after the anticipated August, 1984 MSPB rehearing of Behensky v. FAA. Ms. Wawzenski has no recollection of any request being tied to the Behensky rehearing.

We concluded that there was no misconduct on the part of Ms. Wawzenski or any other employee of the U.S. Attorney's Office. With the advantage of hindsight, we did observe and informed both Ms. Wawzenski and the U.S. Attorney that, in our view, the matter could have been handled better. Although based on our own review of the information contained in Mr. Wood's April 17 correspondence, we cannot disagree with the U.S. Attorney's determination that the allegations had no prosecutive merit, we questioned the propriety of the Chicago U.S. Attorney's Office, albeit a Division separate from Ms. Wawzenski's, making that call. One of the functions of the Public Integrity Section of the Justice

Department's Criminal Division in Washington is to make prosecutive determinations when a conflict of interest or the appearance of such a conflict exists. The use of that Section in this situation would have been preferable. Similarly, although we concluded that Ms. Wawzenski never promised and was under no obligation to first obtain the permission of Mr. Wood before disclosing his unsolicited evidence of misconduct to the FAA, and indeed may have had an affirmative obligation to do so despite his wishes, she should have taken steps to ensure that the information contained in the April 17 letter was transmitted to the proper organization within the Department of Transportation or the Federal Aviation Administration to actually assess whether the preparation of the time and attendance documents and the testimony at the MSPB hearings concerning them had amounted to administrative misconduct. Sending the material to the FAA's Regional Counsel in Des Plaines was not the way to ensure such an assessment.

We appreciate your having brought your concerns to our attention. If you or members of your staff require additional information concerning our inquiry, we will be pleased to arrange a meeting to discuss the matter further.

Sincerely,

Michael E. Shaheen Jr.
Counsel

cc: Anton R. Valukas
United States Attorney

John R. Bolton
Assistant Attorney General
Office of Legislative Affairs

EXHIBIT 22 (cont.)

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DIRECTOR

Committee on Public Works and Transportation
One Hundredth Congress
U.S. House of Representatives
Room 2165, Rayburn House Office Building
Washington, DC 20515
Telephone: Area Code 202, 225-4472

B-376 Rayburn Building
Washington, D.C. 20515
October 2, 1987

Mr. Michael E. Shaheen, Jr.
Counsel
Office of Professional Responsibility
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Shaheen:

I am taking this opportunity to respond to your letter of July 6, 1987, regarding concerns I had raised involving the U.S. Attorney's Office of the Northern District of Illinois.

During a subcommittee investigation into the 1981 firing of air traffic controllers, subcommittee staff had discovered that the Federal Aviation Administration had received from the U.S. Attorney's office a copy of a perjury complaint filed by Mr. Phillip Wood, an attorney who represented several fired air traffic controllers. Mr. Wood charged in his complaint that key FAA officials lied in sworn testimony during hearings before the Merit Systems Protection Board. To substantiate his claims, Mr. Wood enclosed supporting documents and stated that he did not want the FAA to know he possessed them.

Despite Mr. Wood's wishes, Ms. Linda Wawzenski from the U.S. Attorney's office sent the entire package both to the FAA's Chief Counsel in Washington, D.C., and to the FAA Regional Counsel in Des Plaines, Illinois. I found this to be particularly disturbing because this information was being sent to the FAA just weeks before Mr. Wood was scheduled to oppose the FAA in an MSPB hearing, which was to focus on the very allegations that Wood had raised in his complaint. Ms. Wawzenski's cover letter even pointed out the nature of the upcoming hearing. Yet, by breaching the confidentiality requested by Mr. Wood, the Justice Department provided the FAA with Mr. Wood's arguments only weeks before this important hearing.

Your staff investigated the incident regarding Ms. Wawzenski's actions and reported their findings to me both in letter and in person. I do not question the manner in which your

EXHIBIT 23

staff investigated this situation. The investigation appears to have been conducted in a thorough and professional manner. However, I am troubled with the conclusions that were drawn.

Your staff concluded that Mr. Wood's perjury complaint was reviewed by personnel in the U.S. Attorney's Criminal Division prior to the time the U.S. Attorney's office sent the complaint to the FAA regional counsel on June 4, 1984. Further, your staff concluded that someone in the Criminal Division had recommended that the material be sent to the FAA for administrative action. Finally, your staff concluded that someone in Criminal reviewed the complaint again in July 1984, after receiving additional documents from Mr. Wood. At this point, Criminal recommended that the matter be referred to the Department of Transportation's Inspector General's office. (We checked with DOT's IG office, and found that this recommendation had not been received from the Justice Department. Was this recommendation actually made and communicated to DOT's IG?)

It troubles me that the basis for concluding that the initial review actually took place is supported only by statements from personnel in the U.S. Attorney's office. If the Criminal Division did conduct a review of Wood's complaint prior to June 4, 1984, why is there no written record or file detailing this review? I am concerned that you could not find one piece of paper generated during this review. Isn't this very unusual? Why are those who positively claim there was such a review unable to name the individual who conducted the review? How could any type of comprehensive review and investigation have been conducted in the short time span from April 17 (Wood's letter) to June 4 (Wawzenski's letter)?

In addition, Ms. Wawzenski's cover letter of June 4 to FAA provides no indication of any review undertaken by the Criminal Division. (See enclosure) Nowhere in that cover letter does Ms. Wawzenski state that this matter was reviewed by the Criminal Division. Rather, Wawzenski wrote, "...the undersigned assistant (Wawzenski) along with James T. Hynes, Chief of the Civil Division, has spent considerable time reviewing Mr. Wood's submission. It is our conclusion that there is no action to be taken on this matter by the U.S. Attorney's office. We do believe that this material should be forwarded to you for your review." (emphasis added)

Would Wawzenski and Hynes have spent "considerable time reviewing" Mr. Wood's submission if a review was being done by personnel in the Criminal Division? More importantly, she states quite plainly that "it is our conclusion" that no action be taken and that "we believe" the material should be forwarded to the FAA. (emphasis added) She did not write that these were the conclusions reached by the Criminal Division.

Mr. Michael E. Shaheen, Jr.
Page Three
October 2, 1987

In your investigation, statements from personnel in the U.S. Attorney's office represented the only source of information concerning the Criminal Division's role in the initial review and the forwarding of Wood's materials to FAA. Since these officials played a direct role in supplying the complaint to the FAA, they are hardly disinterested observers. How much weight, then, can we be expected to place upon these officials' statements as the only support for initial involvement by the Criminal Division, when such statements serve to clear these individuals of any wrongdoing?

Isn't it possible that Wood's perjury complaint was never reviewed by the Criminal Division until July 1984? (This was the only time period referenced in the files.) Isn't it possible that the so-called initial review, supported only by claims of involved parties, never took place but was created for the purpose of being able to (1) state that Wood's complaint did receive review by the appropriate division (e.g. Criminal) before it was sent to FAA, and (2) blame some unidentified individual for recommending it be sent to FAA?

Given the fact that there was no documentation to support the initial review and that the U.S. Attorney's office was unable to tell your staff who conducted this initial review, and given the fact that an initial review by Criminal is inconsistent with Wawzenski's assertions in her June 4 cover letter to FAA, I have a very difficult time agreeing with the conclusions reached by your staff.

Unless your staff can provide the subcommittee with any additional evidence that would support their conclusions, the subcommittee's report must reflect the skepticism contained in this letter. It was my hope that we would be able to reach some final determination on this matter, but based upon the lack of evidence, the subcommittee must treat these questions as insufficiently answered.

Sincerely,

James L. Oberstar

James L. Oberstar
Chairman
Subcommittee on
Investigations and Oversight

JLO/tjm
Enclosure

EXHIBIT 23 (cont.)

U.S. Department of Justice

Office of Professional Responsibility

Washington, D.C. 20530

Chairman James L. Oberstar
Subcommittee on Investigations and Oversight
Committee on Public Works and Transportation
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of October 2, 1987, in which you questioned the conclusions we reached in our inquiry into the conduct of Assistant United States Attorney Linda A. Wawzenski.

Whenever this Office conducts any investigation into possible employee misconduct, we formulate our findings and conclusions solely from the evidence we have been able to develop during the course of that investigation. If we receive plausible explanations from employees whom we have no reason to disbelieve, and their explanations remain uncontroverted by any other evidence we develop, we find in their favor.

That was precisely the situation in the Wawzenski inquiry. Based on our knowledge of the workings of United States Attorney Offices in large cities such as Chicago, where the workload is heavy, it was quite plausible that an Assistant in the Criminal Division of the Office could have reviewed the information provided by Mr. Wood and have given an oral opinion that criminal action was not warranted, without any written record being made and without anyone recalling which Assistant gave that initial opinion. The material submitted by Mr. Wood was not that complicated -- either factually or legally. It should not have taken an Assistant very long to review it and would not have necessarily resulted in the creation of any formal document memorializing the review. Our experience also tells us that Ms. Wawzenski's assertion in her letter of June 4, 1984, to the FAA that "[i]t is our conclusion that there is no action to be taken...by the U.S. Attorney's office" (emphasis added) does not constitute refutation of the statements to us that the Criminal Division in fact conducted the review. Assistants seldom detail the inner workings of their offices to the outside world, including -- and sometimes especially in the case of -- client agencies.

EXHIBIT 24

We understand questioning whether it is possible that Mr. Wood's perjury complaint was never reviewed by the Criminal Division until July, 1984 (and that we were lied to in the course of our investigation).* We asked ourselves the same question. But for our purposes -- establishing whether employee misconduct has occurred -- the existence of these possibilities is largely irrelevant. Possibilities cannot alleviate our burden of proof and our requirement that we base a finding of misconduct solely on the evidence at hand.

We appreciate your view of these matters. We hope that, similarly, you will appreciate our perspective.

Sincerely,

Michael E. Shaheen Jr.
Counsel

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* We think it is possible, but unlikely. First, the explanations make sense to us. Second, the possible consequenses to employees who lie to us are severe. Third, the risk involved in any such lie clearly outweighed any advantage to be gained from the lie. Ms. Wawzenski's actions, even if Criminal Division review had never taken place, could still be considered as merely deficient follow-through on a proper initial judgment on her part, ie. that she had an obligation to turn over unsolicited evidence of possible employee wrongdoing to the employees' agency, regardless of the status of the litigation and Mr. Wood's requests to her.